No. 10313

United States
Circuit Court of Appeals
For the Ninth Circuit.

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

NORTH AMERICAN AVIATION, INC.,
Respondent.

Transcript of Record

Upon Petition for Enforcement of an Order of the National Labor Relations Board

ROTARY COLORPRINT, 590 FOLSOM ST., SAN FRANCISCO 60-1-15-43

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INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

Index

Index Page

BOARD'S EXHIBIT No. 1-B

United States of America

Before the National Labor Relations Board
Twenty-First Region

Case No. XXI-C-1864

In the Matter of

NORTH AMERICAN AVIATION, INC.
and

UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, LOCAL 887, CIO.

COMPLAINT

It having been charged by United Automobile, Aircraft and Agricultural Implement Workers of America, Local 887, CIO, hereinafter called the Union, that North American Aviation, Inc., hereinafter called Respondent, has engaged in and is engaging in, at Los Angeles, California, certain unfair labor practices affecting commerce as set forth and defined in National Labor Relations Act, approved July 5, 1935, 49 Stat. 449, hereinafter referred to as the Act, the National Labor Relations Board, by its Regional Director for its Twenty-first Region, designated as agent of said Board by Article IV, Section 1, subsection (c) and Article II, Section 5, of its Rules and Regulations, Series

2, as amended, hereby issues its Complaint and alleges the following:

1. Respondent is a Delaware corporation, having its principal office and place of business and its principal plant at Inglewood, County of Los Angeles, State of California, and operating other plants in other states of the United States. Respondent is engaged in the manufacture of aircraft and aircraft parts and accessories.

2. Respondent causes, and at all times herein alleged continuously has caused, large quantities and valuable amounts of raw materials used by Respondent in connection with its manufacturing operations at its plant at Inglewood, California, to be transported from points and places outside of the State of California to Respondent's plant at Inglewood, California.

3. Respondent causes, and at all times herein alleged continuously has caused, large quantities and valuable amounts of the aircraft and aircraft parts and accessories manufactured by it at its Inglewood plant to be sold and transported from the Inglewood plant to and through states and territories of the United States other than the State of California, and to foreign countries.

4. United Automobile, Aircraft and Agricultural Implement Workers of America, Local 887, affiliated with the Congress of Industrial Organizations, is, and at all times herein alleged was, a

labor organization within the meaning of Section 2, subsection (5) of the Act.

5. On April 14, 1941, the National Labor Relations Board, pursuant to Section 9 (c) of the Act, certified the Union as the exclusive collective bargaining representative of the production, inspection, timekeeping, production control, storekeeping and maintenance employees of Respondent at its Inglewood, California, plant, including group and working leadmen, excluding office workers, employees of the engineering department, welders, plant police, supervisors, officials who have the right to hire and discharge, and all other supervisory employees, including and above the rank of assistant foremen. Pursuant to Section 9 (a) of the Act, the Union is now, and at all times since April 14, 1941, has been the exclusive representative of all such employees for the purposes of collective bargaining with Respondent with respect to rates of pay, wages, hours of employment and other conditions of employment.

6. On or about July 18, 1941, Respondent entered into a collective bargaining agreement with the Union as such exclusive collective bargaining representative of said employees. A true and correct copy of said agreement is hereunto attached, marked Exhibit "A" and incorporated herein by reference as though fully set forth herein. By said agreement, as appears more particularly in Article V of said Exhibit "A", a procedure was provided for the

settlement and adjustment of any dispute arising between Respondent and employees of Respondent covered by said agreement regarding the interpretation or application of any of the terms of the agreement or any other request or grievance.

7. Respondent by its officers and agents, while engaged as described in paragraphs 1, 2, and 3 hereof, on or about August 12, 1941, distributed to all of its employees within the unit covered by its contract with the Union a notice, a true and correct copy of which is attached hereto, marked Exhibit "B" and incorporated herein by reference as though fully set forth herein, and a copy of said contract, Exhibit "A" attached hereto. Said notice was distributed without consultation with, or notification of the Union, and without the knowledge of the Union. Since August 12, 1941, Respondent has given a copy of said notice and of said contract to each new employee upon his employment. By said notice, Respondent did establish unilaterally a procedure for the settlement and adjustment of disputes or grievances arising between Respondent and employees of Respondent covered by said agreement, Exhibit "A" attached hereto, under which procedure grievances would be handled directly with the employees involved and without the knowledge, consent, or participation of the Union.

8. By its issuance of said notice and its establishment of said procedure, as set forth and described in paragraphs 5, 6, and 7 hereof, Respond-

ent has refused and is refusing to bargain collectively with the Union as the exclusive representative of its employees (as described above) and thereby engaged in and is thereby engaging in unfair labor practices within the meaning of Section 8, subsection (5) of said Act.

9. By its issuance of said notice and its establishment of said procedure, as set forth and described in paragraphs 5, 6, and 7 hereof, Respondent interfered with, restrained and coerced its employees in the exercise of their right to self-organization, to form, join, or assist labor organizations, and to bargain collectively through representatives of their own choosing, and thereby engaged in and is thereby engaging in unfair labor practices within the meaning of Section 8, subsection (1) of said Act.

10. The acts of Respondent, as set forth in paragraphs 5 through 9 hereof, occurring in connection with operations of the Respondent described in paragraphs 1 through 3 hereof, have a close, intimate and substantial relation to commerce, as defined in Section 2 (6) of the Act, and have led, and tend to lead, to labor disputes burdening or obstructing commerce and the free flow of commerce.

11. The acts of Respondent set out in paragraphs 5 through 9 hereof constitute unfair labor practices affecting commerce and the free flow of commerce within the meaning of Section 8, subsec-

tions (1) and (5) and Sections 2(6) and (7) of said Act.

Wherefore, the National Labor Relations Board, on the 15th day of April, 1942, issues its Complaint against North American Aviation, Inc., Respondent herein.

WILLIAM R. WALSH,
Regional Director
National Labor Relations Board
Twenty-first Region
808, U. S. Post Office and Court House
Los Angeles, California

EXHIBIT A

AGREEMENT

This Agreement entered into by and between North American Aviation, Inc., a corporation, located at Inglewood, California, hereinafter called "the Company," and the United Automobile Workers of America, Local 683, affiliated with the C.I.O., hereinafter called "the Union" as the exclusive bargaining agent acting for and on behalf of the employees of the Company in the unit described hereinafter, evidences the desire of the parties hereto to promote and maintain harmonious

Exhibit A—(Continued)

relations between the Company and its employees and the willingness of the Company to deal with them through the Union as their representatives.

Article I

Duration

(1) This agreement shall become effective upon its acceptance by the Union and the Company, and shall remain in force until the 1st day of July, 1942, and for an additional period of one year thereafter, with the proviso that should either party desire to terminate this agreement or to modify any portion or any of the terms hereof it shall notify the other party in writing not less than thirty (30) days prior to the 1st day of July, 1942, or the end of any subsequent yearly period, that the party giving such notice desires either to terminate the agreement at the end of such yearly period or to negotiate such amendments or changes of the terms or provisions thereof as are specified in such notice.

(2) Negotiations upon such proposed amendments or changes of the terms of this agreement covered in the notices of desire to amend shall begin not later than twenty (20) days prior to the expiration date or the expiration of any subsequent yearly period and shall continue until agreement is reached, and during said negotiations this agreement shall remain in full force and effect, except that during such negotiations subsequent to the expiration date or the expiration of any subsequent yearly period either party, on ten (10) days' notice to the other, may terminate said contract.

Exhibit A—(Continued)

(3) This agreement shall be superseded by any legal regulation which is or which may be imposed by any governmental agency to the extent that such regulation is in conflict with any of the terms and provisions of this agreement.

Article II

Recognition

(1) The Company recognizes that by virtue of and pursuant to the power vested in the National Labor Relations Board, by Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, and pursuant to Article III, Sections 8 and 9, of National Labor Relations Board Rules and Regulations—Series 2, as amended, it was certified on the 14th day of April, 1941, that International Union, United Automobile Workers of America, Local 683, C.I.O., Aircraft Division, has been designated and selected by a majority of the production, inspection, timekeeping, production control, store keeping, and maintenance employees of North American Aviation, Inc., Inglewood, California, including group and working leadmen, and excluding office workers, employees of the engineering department, welders, plant police, supervisors, officials who have the right to hire, and discharge, and all other supervisory employees including and above the rank of assistant foremen, as their representative for the purposes of collective bargaining, and that pursuant to the provisions of Section 9 (a) of the National Labor

Exhibit A—(Continued)

Relations Act, International Union, United Automobile Workers of America, Local 683, C.I.O., is the exclusive representative of all such employees for the purposes of collective bargaining, with respect to rates of pay, wages, hours of employment and other conditions of employment.

(2) The Company agrees that any present employee who on May 1, 1941, was a member of the Union or who has become a member of the Union since May 1, 1941, shall as a condition of continued employment maintain membership in good standing; and any employee who hereinafter, during the life of this agreement, becomes a member or is reinstated as a member of the union shall as a condition of continued employment maintain membership in good standing.

Article IV

Representation

(1) The Union shall be represented in the plant by one steward for each 250 employees covered by this agreement.

(2) The plant will be districted on each shift by agreement between the union and the management and one steward shall be elected by the members of the union in each district to represent the employees in that district, as provided in the grievance procedure.

(3) Not more than five district stewards on each shift shall constitute the plant grievance committee

Exhibit A—(Continued)

for that shift, to meet with the management in an effort to settle appeal grievances, as provided in the grievance procedure.

(4) District stewards and members of the plant grievance committee shall be permitted to leave their work after reporting to their respective foremen for the purposes of adjusting grievances in accordance with the grievance procedure, and to attend committee meetings with the management.

(5) No employee shall be eligible to serve as a district steward or a member of the plant grievance committee unless he is an employee and has been an employee for more than six months.

(6) Upon entering a department other than his own in the fulfillment of his duties, district stewards and members of the plant grievance committee shall notify the foreman of that department of his presence and purpose, if he has been sent for, and give the foreman a copy of the written grievance signed by the employee involved.

(7) While on leave of absence, no employee shall serve as a district steward or a member of the plant grievance committee.

(8) District stewards and members of the plant grievance committee are subject to all of the plant rules regarding the conduct of employees on the premises of the Company.

(9) The names of the district stewards and committeemen will be given to the management in writing by the Union and the management will be ad-

Exhibit A—(Continued)

vised of any changes in district stewards or committeemen, in writing.

(10) It is understood and agreed that each district steward and committeeman is employed to perform full time productive work for the Company. District stewards and committeemen will be given permission upon request to leave their work during working hours to perform the following duties:

(a) To present to the foreman grievances or disputes which they have been requested by an employee or group of employees to take up with the foreman.

(b) When it is necessary for them to investigate such a grievance or dispute before it can be properly presented to the foreman.

(c) When it is necessary for him to attend, as a member of the plant grievance committee of his shift, a regular or special meeting of such committee.

(d) A suitable form of pass will be provided when stewards or committeemen request permission to leave their work.

Article V

Grievance Procedure

(1) In the event of any dispute arising regarding the interpretation or application of any of the terms of this agreement or any other request or grievance there shall be no stoppage of work by any em-

Exhibit A—(Continued)

ployee, and all such matters shall be adjusted according to the following procedure:

(a) Between the aggrieved employee and his foreman or with his representative and his foreman.

(b) Between the district steward and the factory manager or his authorized representative.

(c) Between the plant grievance committee of the shift and the works manager or his authorized representative on that shift.

(2) No case will be appealed from one of the above steps to the next higher step until after twenty-four (24) hours. The plant grievance committee on each shift shall consist of not more than five (5) district stewards on such shift, one of whom shall be the chairman and all of whom shall be employees of the Company, whose names have been given to the management in writing by the president of the local Union.

Meetings of the management and the plant grievance committee shall be scheduled weekly on the respective shifts. Emergency meetings may be arranged by mutual agreement.

In the event of failure by the Union to appeal any decision of a grievance, given at one step of the grievance procedure within five (5) working days of such decision, the case shall be considered closed on the basis of the decision so given.

There is no responsibility on the Company to

Exhibit A—(Continued)

make an adjustment in any case unless presented within three (3) days of its occurrence.

(3) If any case is not satisfactorily adjusted by the plant grievance committee on the shift on which the grievance arose, with the management's representative of that shift, it may be appealed to the general manager or his authorized representative, and the grievance committee, within forty-eight (48) hours of such written appeal. The general manager or his representative will render his decision in writing to the chairman of the grievance committee within forty-eight (48) hours after the meeting with the committee if the decision was not given at the meeting.

(4) Any of the periods within which any of the acts required in this section are to be performed may be extended by mutual consent of the parties. In computing the time within which the acts herein are required to be performed Saturdays, Sundays and holidays shall be excluded.

(5) Minutes of the meetings between the grievance committee and the management will be kept and copies of the minutes prepared by the management will be submitted to the Union. After the minutes have been accepted by both parties, copies will be initialed by both parties for their permanent records.

(6) The Company agrees that the grievance committee and the district stewards shall not be hindered, coerced, restrained, or interfered with in the

Exhibit A—(Continued)

performance of their duties of investigating, presenting and adjusting grievances or disputes, which duties shall be conducted on Company time. It is understood and agreed that each grievance committeeman has full time productive work to perform and that he will not leave his work during working hours except when necessary to perform his duties as herein defined. It is further understood and agreed by the parties hereto that each will cooperate with the other in reducing to a minimum the actual time spent by the district stewards and members of the grievance committee in investigating, presenting and adjusting grievances or disputes. If the grievance committee finds it necessary to make an investigation in order to properly present a grievance or dispute to the management, the respective members shall be granted upon request permission to leave their work for this purpose, by their respective foremen or supervisors. They shall report to the foreman or supervisor the general nature of the grievance which they are to investigate and again report to him upon their return to work in the department.

(7) If any employee be discharged for any reason he shall be given the opportunity to present to his district steward his grievance before leaving the plant.

(8) In cases of disciplinary layoff or discharge of employees for infraction of shop rules or other misconduct which merits discipline, the Union reserves the right to seek modification or elimination

Exhibit A—(Continued)

of such penalty and compensation in whole or in part for lost wages on the ground that the employee was wrongfully disciplined or that the penalty was too severe for the offense involved, and such protest shall be handled according to the grievance procedure including the right of appeal to arbitration as provided in Article VI.

(9) In the event the Company has any grievance against the Union for failure to abide by the terms and conditions of this agreement, the grievance shall be presented to the grievance committee provided for herein, and shall be subject to negotiations in accordance herewith.

(10) No provision of this Article shall be interpreted to prevent any employees or group of employees from presenting grievances to the management in accordance with the provisions of Section 9 (a) of the National Labor Relations Act.

Article VI

Board of Arbitration

(1) If a grievance or dispute with respect to the interpretation or application of any of the terms of this Agreement is not satisfactorily settled, either party to this contract shall request that the matter be submitted for settlement to arbitration. If such request is made, the other party shall also agree to submit the matter to arbitration, and it is understood and agreed that the decision of the Arbitration Board, as provided for in this Article, shall be

Exhibit A—(Continued)

final and binding upon both parties, and therefore it is agreed that during the term of this Agreement the Union or its members shall not call or engage in, sanction, or assist in, any sympathy or other strike against, or any slow-down or stoppage of work, of the Company, and the Union will require its members to perform their services for the Company when required by the Company to do so, and during the term of this Agreement the Company shall not cause or permit any lockout of the members of the Union.

(2) The Arbitration Board shall consist of three persons, one chosen by the Union and one chosen by the Company and a third to be chosen by these two. No member of the Board shall have any official, financial or other connection with or interest in either the Company or the Union and its affiliates. The Company and the Union shall submit to each other the names of their respective representatives, and the two shall meet to choose the third member of said Arbitration Board thirty-six (36) hours after the request for arbitration has been made. If the Company and the Union representatives cannot agree within seventy-two (72) hours on a person to act as the third member of said Board, the Company and Union representatives shall request Dr. John R. Steelman, Director of the Division of Conciliation, Department of Labor, to submit a list of five persons qualified to act as the third member of said Arbitration Board. The Union rep-

Exhibit A—(Continued)

resentative and the Company representative, after the receipt of said list, shall each have the right to strike two names from it in the following manner: The two representatives shall determine by lot the order of elimination, and thereafter each shall in that order alternately eliminate one name until only one remains, the fifth or remaining name shall thereupon be accepted by both the Union and the Company as the third member of said Board. Said Arbitration Board shall thereafter meet as soon as possible to hear and adjust said grievance or dispute. Said Board shall render its decision in writing not later than five (5) days after it has taken the matter under submission.

(3) The compensation and expense of the third member of said Board shall be borne equally by the Company and the Union.

(4) No grievance or dispute shall be presented for arbitration until either the Company or the Union has availed itself of the full procedure set forth in Article V hereof and all grievances or disputes shall be considered finally settled and not subject to arbitration unless within fifteen (15) working days from the date of receipt by the Union of the decision of the management as specified in Article V, sub-section 3, the Union shall request in writing that the grievance or dispute be submitted to arbitration.

(5) Before the submission of a grievance or dispute to arbitration, the Company and the Union

Exhibit A—(Continued)

shall set forth in writing specifically the issue or issues to be submitted to arbitration, and the Arbitration Board shall confine its decision to such stipulation of issue or issues.

(6) It is understood that the Arbitration Board shall use every means to expeditiously present, consider, and decide any and all matters submitted as herein provided, and the Company and the Union agree to facilitate the deliberations of said Board in every way possible. Said Board may call any employee as a witness in any proceeding before it, and the Company agrees to release said witness from work if he is on duty. If an employee witness is called by the Company, the Company will reimburse him for the time lost.

Article VII

Management Prerogatives

The right to hire, promote, discharge or discipline for cause, and to maintain discipline and efficiency of employees, is the sole responsibility of the Company except that Union members shall not be discriminated against as such. Any employee who feels aggrieved by any Company action in this respect has recourse through the grievance procedure set forth in this agreement for the adjustment of the grievance. It is recognized that the type of products to be manufactured, the location of plants, the schedules of production, the methods, processes and means of manufacturing, etc., are management prerogatives.

Exhibit A—(Continued)

Article IX

International Representative

The duly accredited International Representative shall be permitted to attend meetings of the plant grievance committee and the management, upon request of the management. In grievances appealed to the plant grievance committee in which the International Representative must actually observe the operations about which the dispute has arisen, during working hours, in order to understand the case, he will be permitted to enter the plant to make such observations, in accordance with the Army, Navy and Company rules respecting plant visitors.

Article XII

Qualifications

Each of the parties hereto warrants that it is under no disability of any kind that will prevent it from completely carrying out and performing each and all of the provisions of this Agreement, and further that it will not take any action of any kind that will prevent or impede it in the complete performance of each and every provision hereof. This agreement contains all of the covenants, stipulations, and provisions agreed upon by the parties hereto, and no representative of either party has authority to make, and none of the parties shall be bound by, any statement, representation, or agreement not set forth herein. No violation or breach

Exhibit A—(Continued)

of this agreement shall be claimed by either party hereto without giving notice in writing to the other and allowing ten (10) days to such other party for redress or correction.

Article XIII

Safety

(3) No employee shall be discharged for refusing to work on a job if his refusal is based upon the claim that said job is not safe or might unduly endanger his health, until the dispute has been adjusted according to the grievance procedure set forth in Article V of this Agreement.

Article XIX

Specific Performance

Either party hereto shall be entitled to require specific performance of the provisions of this Agreement.

Article XX

Seniority

(5) The Company will maintain a complete seniority list, copies of which shall be furnished the Union. Any claimed errors in the seniority list may be reported to the Company regularly through the grievance procedure.

Exhibit A—(Continued)

Article XXVI

Leaves of Absence

(3) If the Company shall refuse an employee leave of absence the employee may then avail himself of the grievance procedure contained in this Agreement.

EXHIBIT "B"

INFORMATION FOR EMPLOYEES

GRIEVANCE PROCEDURE

In accordance with the National Labor Relations Act and the policy of North American Aviation, Inc., every employee has the privilege of presenting his grievance directly to the Management.

In order that this procedure may be known to employees, the following steps are outlined:

1. Employees must first take up the matter with their Foreman. If a satisfactory settlement is not *reach,* the employee may request the presence of a member of the Industrial Relations Department who will help in attempting to adjust the matter.

2. If the complaint is not adjusted satisfactorily, a member of the Industrial Relations Department will arrange a hearing with the Works Manager or his representative.

3. Should the decision of the Works Man-

ager not be satisfactory to the employee, he may, if he so desires, present a written appeal to the President of the Company. The Industrial Relations Department will assist the employee in arranging for the presentation of his case.

4. Should the decision of the President not be satisfactory, and the employee so desires, the matter may be submitted to outside arbitration in a manner mutually acceptable to both the employee and the Company.

The Industrial Relations Staff is available to all employees who may desire information or assistance with respect to their rights or privileges under either company policy or collective bargaining. Employees desiring to contact the Industrial Relations Department may call at the following hours Monday through Friday:

First Shift—At the conclusion of the shift.

Second Shift—Before the shift starts work.

Third Shift—Third shift employees shall ask their Foreman to make arrangements for an appointment. Such matters will receive prompt attention.

NORTH AMERICAN AVIATION, INC.
J. H. KINDELBERGER
President.

BOARD'S EXHIBIT No. 1-C

[Title of Board and Cause.]

ANSWER OF RESPONDENT NORTH AMERICAN AVIATION, INC.

Comes Now, North American Aviation, Inc., respondent in the above entitled matter, and in answer to the complaint filed against it herein, affirms and denies as follows:

1. In answer to paragraph 6 of said complaint, respondent admits the allegations thereof and that in the agreement referred to in said paragraph and attached to the complaint as Exhibit A a procedure was provided for the settlement and adjustment of any dispute arising between respondent and employees of respondent covered by said agreement regarding the interpretation or application of any of the terms of the agreement, or any other request or grievance, and in this connection respondent alleges that by the terms of paragraph (10) of Article V of said agreement it was agreed between the union and respondent that any individual employee of respondent or group of employees should have the right at any time to present grievances to respondent for adjustment and settlement.

2. In answer to paragraph 7 of said complaint, respondent denies that it in any manner, shape or form established unilaterally, or in any other manner, a procedure for the settlement or adjust-

ment of disputes or grievances arising between respondent and the employees of respondent covered by the agreement set forth as a portion of the complaint and denominated Exhibit A, or arising between respondent and any of its employees; but in this connection respondent alleges that by the terms of paragraph (10) of Article V of said Exhibit A attached to said complaint, the respondent and the union agreed after negotiation that individual employees or groups of employees of respondent should have the right to present grievances to said respondent for adjustment without the knowledge, consent or participation of the union.

3. In answer to paragraph 8 of said complaint, respondent denies each and every allegation contained in said paragraph, and each and every part of each thereof, and further specifically denies that it established any procedure whatsoever, whether as set forth in said complaint or otherwise, or that by the issuance of any notice or the following of any procedure referred to in the complaint the respondent has refused at any time, or is refusing, to bargain collectively with the union as the exclusive representative of its employees, or thereby or in any manner has engaged in or is engaging in any unfair labor practice of any kind or character within the meaning of Section 8, subsection (5) of the Act referred to in the said complaint.

4. In answer to paragraph 9 of said complaint, respondent denies each and every allegation con-

tained in said paragraph, and each and every part of each thereof, and further specifically denies that it established any procedure whatsoever, whether as set forth in said complaint or otherwise, or that by the issuance of the said notice or the following of any procedure of any kind or character, whether as set forth in said complaint or otherwise, the respondent interfered with or restrained or coerced its employees in the exercise of their right to self-organization, to form or join or assist labor organizations or to bargain collectively through representatives of their own choosing, or that it thereby or in any manner set forth in said complaint engaged in or is engaging in unfair labor practices within the meaning of Section 8, subsection (1) of the Act referred to in said complaint.

5. In answer to paragraph 10 of said complaint the respondent admits that any acts of respondent occurring in connection with the operations of the respondent described in paragraphs 1 through 3 of said complaint have a close, intimate and substantial relation to commerce, as defined in Section 2, subsection (6) of the Act; with this exception respondent denies each and every allegation contained in the said paragraph and each and every part of each thereof, and further specifically denies that any acts of the respondent as set forth in said complaint have led to, or tend to lead to, labor disputes burdening or obstructing commerce or the free flow of commerce; and in this connection respondent alleges that under the terms and pro-

visions of the labor agreement between respondent and the union, attached to said complaint as Exhibit A, and specifically Articles V and VI thereof, no dispute between respondent and its employees or the union could lead or tend to lead to a labor dispute that would burden or obstruct commerce or the free flow thereof. Respondent further alleges in this connection that the union has never at any time presented to respondent any complaint with respect to the posting of the notice attached to said complaint as Exhibit B for adjustment according to the terms and provisions of Articles V and VI of said agreement attached to the complaint as Exhibit A.

6. In answer to paragraph 11 of said complaint respondent denies each and every allegation set forth in said paragraph, and each and every part of each thereof, and further specifically denies that any acts of the respondent referred to in the said complaint constitute unfair labor practice or practices affecting commerce or the free flow thereof within the meaning of Section 8, subsections (1) or (5), or Section 2, subsections (6) and (7) of the said Act, or within any meaning whatsoever.

Wherefore, respondent asks that the complaint of the National Labor Relations Board issued on the 15th day of April, 1942, in this matter be dismissed.

J. STUART NEARY
of Gibson, Dunn & Crutcher
Attorneys for Respondent
North American Aviation, Inc.

BOARD'S EXHIBIT No. 2

[Title of Board and Cause.]

STIPULATION

It Is Hereby Stipulated between North American Aviation, Inc., Respondent herein, by Gibson, Dunn & Crutcher, its attorneys, and John Paul Jennings, Attorney, National Labor Relations Board, as follows:

1. North American Aviation, Inc., hereinafter called the Respondent, is a Delaware corporation, with its principal office and place of business at Inglewood, County of Los Angeles, State of California, where Respondent owns and operates a plant, herein called the Inglewood plant. Respondent is engaged at the Inglewood plant in the manufacture of aircraft and aircraft parts and accessories.

2. North American Aviation, Inc., of Texas, is a wholly owned subsidiary of Respondent, which operates a plant for the manufacture of aircraft and aircraft parts and accessories at Dallas, Texas. North American Aviation, Inc., of Kansas, is a wholly owned subsidiary of Respondent, which operates a plant for the manufacture of aircraft and aircraft parts and accessories at Kansas City, Kansas.

3. During the calendar year 1941, Respondent purchased raw materials used by it in connection

with its manufacturing operations at its Inglewood plant of a total value in excess of $17,000,000, of which raw materials to the value in excess of $15,-300,000 were transported to the Inglewood plant from points and places outside of the State of California.

4. During the calendar year 1941, Respondent sold aircraft and aircraft parts and accessories manufactured by it for a sum in excess of $69,-500,000. Products of the Inglewood plant, as above specified, sold for a sum in excess of $62,550,000, were transported from the Inglewood plant to States of the United States other than the State of California and to foreign countries.

5. For the purposes of this proceeding, Respondent admits that its operations affect commerce within the meaning of Sections 2 (6) and (7) of the National Labor Relations Act.

Dated: This 27th day of April, 1942.

NORTH AMERICAN AVIATION, INC.

By GIBSON, DUNN & CRUTCHER
Its Attorneys

J. STUART NEARY

JOHN PAUL JENNINGS
Attorney, National Labor Relations Board

TRANSCRIPT OF ORAL TESTIMONY BEFORE NATIONAL LABOR RELATIONS BOARD ON JULY 14, 1942.

Mr. Reilly: Now, what are the typical kind of grievances brought up by this machinery, sir?

Mr. Neary: There isn't any evidence in the record that any of them were brought up. There were only two that we handled over 800 of the other procedure, but the Examiner refused the offer of proof. The Board's attorney objected to it.

Dr. Leiserson: Let us look at your notice No. 4. If the employee is not satisfied, the matter may be submitted to outside arbitration in a manner mutually acceptable to both employee and the company.

Now, the law gives the employee the right to take up grievances with the Management, and the Management may—the provision of the Act gives the Management the right to bargain individually with an employee about how a dispute will be arbitrated and if it does, this obviously—obviously this manner of setting up arbitration and whether they agree on arbitration or not, in the process of bargaining—if you do it with a union and set up an Arbitration Board, all right, or you can do it as contact with an individual in a manner satisfactory to both, and that means you have to bargain about the procedure you do set up, by such a Board,—and when that Board makes a decision in the type of grievance that is contrary to a decision made under the exclusive agreement—you take the Act

when it said the employee may go to the employer and present his grievance, give the employer the authority to set up all of this duplicate machinery and bargain with each individual about an arbitration Board?

Mr. Neary: I don't pretend that. The only provision here in paragraph 4 of this is not to bargain —as to whether it shall go to arbitration, but simply a means that if the methodical detail——

Dr. Leiserson (Interposing): In a manner mutually accepted—what does that mean? If that isn't bargaining, what is it? Not acceptable to nobody—and if it is acceptable, there is a bargaining.

Mr. Neary: That is right; I am not denying that, but there isn't any question but what it is necessary —it is important that they are given the right to present grievances, that they have the right to settle those grievances.

The right to present grievances is the right.

The Chairman: Would you say that you have the right to settle those grievances outside of the confines of the joint agreement?

Mr. Neary: Out of line?

The Chairman: Yes.

Mr. Neary: Why, no. My contention is that the Trial Examiner's contention with respect to the matter, the construction of Section 9, and the union's contention, and the Board's contention, at the times of the hearing, is wrong.

I don't think that when you are settling a grievance, you are bargaining at all. You are not. And

you certainly are not bargaining collectively, even though you settle a grievance with the Union, because a grievance is a settlement of an individual grievance in the—and it is supposed to be settled according to certain standards which have been preliminarily set up, the standards of the contract.

The Chairman: Now, take a case that might come up.

You have a grievance for seniority. You have a seniority basis, kept up with the employees, and which the union has the right to protect.

Now, suppose some individual employee or group of employees raise some question and make use of this machinery. How can you dispose of such a grievance because if these fellows—if something went wrong, that means taking something away from somebody else, because seniority means superior and inferior rights and the——

Mr. Neary (Interposing): Seniority always means that any contract—according to a definite pattern,——

Dr. Leiserson (Interposing): But the pattern would mean—it would be the agreement with the exclusive bargaining unit.

The Chairman: Yes.

Dr. Leiserson: All right, but how would the union that has that exclusive agreement know when you are separating the thing, as you call it, with the individual under this procedure, or where it is undertaken under this procedure, how would the union know about it?

Mr. Neary: Well, as a practical matter, you know as well as I do that in a shop where, for instance, seniority provisions prevail and I am being hurt by your advancement of your claim for certain advancement over me that it gets to be pretty generally known, I am not worried about the practical difficulties.

Dr. Leiserson: Well, you might make an agreement to give one fellow—move him up three points, you might agree to move him up three points on the seniority list. Obviously the union would have to know about that.

But take an example that involves wages where you have certain provisions with respect to wages. A man has a grievance. You say the standard is your collective agreement. He goes to the employer and the employer under this arbitration procedure, fixes the wage with him alone——

Mr. Neary: That is right.

Dr. Leiserson: ——that is outside the union—the union doesn't know whether you are undermining the agreement or paying more than the agreement. Now, how can you—wouldn't that be individually bargaining with respect to a rate of pay, if that settlement was not in line with the settlement of similar grievances under the collective bargaining agreement?

Mr. Neary: It would not be bargaining. It would be a violation of the contract in point, and that is what you are assuming when you are assuming all of these facts.

Dr. Leiserson: Wouldn't it be a violation of the agreement to settle an individual complaint with an individual that involved standards set up by the exclusive representative without consulting that exclusive representative as to those standards?

Mr. Neary: Well, now, as a practical matter, it may be desirable—the basic right is their's. It may be desirable that a different form of notice or provision be made for the notification of the union to give them the right to—as a matter of fact, about any dispute that has been settled individually, as contrary to the rights that they have under the contract.

I insist, gentlemen, that that is not an issue in this case; nothing about the form of the procedure here at all. The question solely is the right to issue a notice and establish a procedure. The question is the interpretation of Section 9 (a), the fundamental right of an employee to present a grievance individually.

The Chairman: Well, won't that turn upon the nature of what you are trying to do?

Mr. Neary: No. As a matter of fact, that is one reason that I am here.

The Chairman: They don't have an abstract right.

Mr. Neary: I don't know what they have done, if it isn't an abstract right, and a practical one, under the terms of the National Labor Relations Act. It is an abstract right and certainly if it can't be exercised, then it isn't worth anything, but it——

The Chairman (Interposing): Well, properly exercised—proper or improper, you have got to decide upon the basis of what is done. If you are just pressing upon collective bargaining, then it is wrong, is it not?

Mr. Neary: Well, I am willing to go to issue on those points. As a matter of fact, I attempted to introduce into the record in this case the effort on the part of North American to redraft this notice after I had discussions with your Regional Director of the 21st Region, and discussions with the union representatives through the grievance procedure to redraft this notice to conform to the criticisms that had previously been made.

We were perfectly willing to do that. There was no question with respect to that, and we were never requested to do so by the union.

Dr. Leiserson: Well, I wonder whether the mistake you are making isn't this: There isn't any question that under the proviso, or you take the section—the Act is intended to set up collective bargaining, one representative for all the employees, whether they want the union or not, for——

Mr. Neary: For the purposes of collective bargaining.

Dr. Leiserson: ——for the purpose of collective bargaining. All right. Now, in that collective bargaining agreement there is set up machinery for administering the bargaining and that includes grievance machinery. O. K.

Now, knowing that, Congress said nothing in this

to prevent the employee to go to the employer and present, if he has got it, grievances. That correlatively means there is nothing in the Act to prevent the employer from fixing up the grievance with him, provided, of course, he doesn't violate the Act, but does that mean that the presentation of grievance gives the employer the right to go beyond fixing the grievance and setting up machinery including arbitration as if he were paralleling the collective bargaining agreement or machinery. That is the issue here.

You can fix up any grievance and you can let him go to the highest operating officer, I suppose, to fix the grievance up, but for you to say "I will take up with each individual"—you would have a dozen arbitration boards or you might have a dozen arbitration boards as mutually agreeable between individual employees and me, and then we'll parallel all of that what becomes—we'll parallel all of that arbitration machinery and what becomes of the exclusive representation under those circumstances?

Mr. Neary: I don't think it interferes with the exclusive representation at all. As a matter of fact, it is entirely possible to have three or four decisions respecting the same issue under any grievance procedure or arbitration procedure you might set up.

There might be a grievance today with respect to the interpretation of well, maintenance in union membership; we have had an arbitration on that, and we have the decision of an arbiter and an arbitration board setting forth the rules and regula-

tions by which we shall determine whether or not a person was a member of the union.

Well, tomorrow we might have another one, and another and different arbitration board may, under a different set of fact, following generally the same principles in the contract, set up different standards with respect to each individual in the case.

But I don't think that because Courts will render different decisions with different sets of facts, that you are changing——

Dr. Leiserson: Now, wait a minute. You are dealing with the union and you—if you deal with the union and you gather decisions on setting the standard for determining whether a fellow was a member of the union, and you got one decision, that binds you in your relationship with the union for all the employees covered by that agreement,——

Mr. Neary (Interposing): For the purposes of collective bargaining.

Dr. Leiserson: For the purposes of collective bargaining.

Mr. Neary: With respect to wages, hours and working conditions.

Dr. Leiserson: I know, but it binds you for all of the employees covered by that agreement, otherwise there is no exclusive agreement.

Now, it is conceivable that under the same machinery, that a later judge or the same judge might revise his opinion and make it less binding on you and the union for all the employees in the bargaining unit—there can be no discrimination.

Now, then, if you have a decision from one Board covering all employees in the bargaining unit and then another Board comes along not acting in the collective bargaining relationship with the union, and it makes a decision different from the one made under the union agreement obviously that is setting up complicating machinery that purports to say to the individual employee "regardless of the fact that you are covered by this agreement and bound by all the arbitration machinery, I, the employer, can set up another arbitration Board," and if, perchance he wants to make a different decision, we are not bound by it.

Mr. Neary: Well, I must answer two points there.

In the first place, I do not think under the National Labor Relations Act nor under the terms of our agreement, that all employees are bound by the arbitration or grievance procedure.

Dr. Leiserson: Well, that is a problematical question,——

Mr. Neary: That's right.

Dr. Leiserson: ——as to what is collective bargaining. You would—you agreed that every person in the unit is represented by the union and covered by the agreement; there is no question about that.

Mr. Neary: For the purpose of collective bargaining.

Dr. Leiserson: By whatever the agreement said.

Mr. Neary: That is right; by the terms of the agreement. If the terms of the agreement, even

though they made the agreement's procedure the exclusive machinery, I say that under the Act individual employees may present grievances to the employer, and present isn't——

Dr. Leiserson: He can fix them, but he can't violate his bargaining agreement.

Mr. Neary: I agree with that.

Now, as to the second point: Suppose that we come through with this grievance, this individual grievance and go to arbitration and the arbiter decides that this individual's right, under the terms of this agreement and the facts in the particular case. Now, that arbitration is not binding upon the union. It is binding only on the company with respect to an individual, to that individual.

Dr. Leiserson: All right. Now, with your collective bargaining agreement, the exclusive representative has set up arbitration machinery, hasn't he? —to arbitration. That covers all of the employees in the bargaining unit. Now, you take the position that in spite of the Act the provision that an individual employee may present a grievance to the employer; that gives the employer the right to set up other arbitration machinery for other—for the same employees that are covered by the exclusive agreement.

That's what you expect.

Mr. Neary: For individual grievances, but not as to—I don't understand that it has the right to interrupt the procedure of the——

The Chairman (Interposing): Would you say

that the—you have an arbitration case bringing out one of these individual grievances that they arbitrated and ruled differently from what an arbitrator has—in the agreement?

Mr. Neary: It is entirely conceivable.

The Chairman: Well, what effect has it, then? What is binding about it?

Mr. Neary: The binding effect would only be on the company with respect to the——

The Chairman (Interposing): There you have an agreement which requires—you have differences which the—the binding——

Mr. Neary (Interposing): The effect would only be on the company.

The Chairman: You have an agreement which requires—you have differences—that agreement is binding on all parties. You have certain standards and then you try to get other standards—Now, I can see that it is quite possible for any individual to try to get his grievance settled in accordance with any agreement—if you are going to put it up to an arbitrator and have that arbitrator interpret that agreement in such a way—that is his business and——

Mr. Neary: I want to try to answer your question. You are assuming for the purpose of argument, that it may be possible for an individual to present individual grievances to his employer and the grievance to be attested to by the employer up to the point of arbitration, but that beyond that the employer may not go with the individual griev-

ance and may not set up a separate arbitration Board to determine any of these rights, under the provisions of this agreement.

Dr. Leiserson: Then you require joint bargaining different from the agreement. That employee is within the bargaining unit. Now, he can go to the employers and the employers tell him, now the standard set here by this exclusive agreement, what is decided by my joint committee and the other, plus arbitration, under the agreement I will give you—and that's all he can say.

Mr. Neary: I see what you mean. I think perhaps we are in agreement on that. I don't think that even under union arbitration that if you have an arbitration setting forth an interpretation of some basic agreement of some sort, that the employer has any right in the future thereafter to settle by arbitration.

Those interpretations are determinations under the basic agreement—I think the individual grievances in taking them up the employer should be bound not only by the basic agreement that is negotiated, but also by any decisions rendered in union grievance committees with respect to the same issues.

Now, any violation of that I consider would clearly be a violation of the——

The Chairman: Or any issue which involves the interpretation of the collective agreement.

Mr. Neary: Well, your position then is that any time an individual——

(Discussion)

Mr. Neary: Then your question is that any issue that may be raised by an individual which involves interpretation of the basic agreement with respect to his rights must be decided only in a grievance procedure, only where the grievance procedure and the contract, the arbitration procedure and the contract, through the——

The Chairman (Interposing): The interpretation of the——

Dr. Leiserson (Interposing): You have an agreement with an exclusive representative for all of the employees in the whole plant. And you have written it out, and you have provisions in it for interpreting and applying that agreement, that this provision in the Act which says an employee may present an individual grievance, that gives you the right to arrange with that employee to get an independent interpretation of your agreement not with the individual employee for you can't make an agreement with him, but to get from a third party, without consulting the union, an interpretation of an agreement that you made with the union.

Mr. Neary: Yes. Now, I think this matter has been decided by Certain Courts of Appeal. I think in the matter of National Labor Relations Board vs. Union Pacific Stage the Court there clearly held the adjustment of individual grievances directly between employee and employer and such pro-

cedure—the Act does not prohibit the adjustment of individual grievances directly between employee and employer and such procedure is entirely consistent with collective bargaining in matters affecting the employees of the plant.

Now, I think that is where we are——

Dr. Leiserson (Interposing): That is perfectly true, but not duplicating machinery. The adjustment of the grievance is one thing, but duplicating machinery is another.

Mr. Neary: The point, Dr. Leiserson, is this: We have 18,000 employees just in this one plant. If individuals have the right to present grievances, and we have corresponding duties to adjust them, we must have some procedure because there is too great a possibility for the things you are pointing out here—for discrimination to arise in the interpretation of the terms of the agreement.

What we want more than anything else is uniformity in the interpretation of the terms of the agreement and in settling these grievances. We therefore must have a procedure and we consider that the procedure ought to be uniform or parallel to the set-up in the contract so that there will not be any discrimination or favoritism one way or the other.

Dr. Leiserson: With whom do you make that procedure? You can make procedure for your own people,——

Mr. Neary: That's all.

Dr. Leiserson: ——and for your own Manage-

ment, but you haven't any right to bargain about procedure with any individuals.

Mr. Neary: All we have done is no bargaining at all.

We simply set forth in this notice the statement that if you desire to present a grievance individually without representation by the union, this is the only procedure by which we will handle it.

Dr. Leiserson: You think the Act permits you, as an employer to say to employees who have an exclusive agreement and who have been bound by an election, "Here, I want to encourage you to come to this machinery that I am setting up, and that's why I am making full parallel machinery to the rest so that you don't have to go through the union machinery; I'll provide you with a substitute."

You think that was contemplated under the Act?

Mr. Neary: I think that the citation of cases, and particularly the ones which we filed in supplemental brief, I think are indicative of an invitation to come in and work with us,—Midland Steel Products Company vs. National Labor Relations Board, 113 Fed. (2d).

I think that it is necessary not that we—I misstated myself there—Not that we asked these people to come in and don't use the other grievance procedure; I don't want the Board to get that impression, or think that we have the right—I think we have the right and I think it is our duty in order to avoid discrimination and in order to avoid the possibility of discrimination and to make everything

public, I think we have the duty to set forth publicly the procedure by which we will handle individual grievances, if we do.

Now, as a matter of fact, under the provisions of the notice, the fact is that two grievances have been handled in that manner, and 800 some odd have been handled by the other method, and the statement of the Trial Examiner that we have not bargained collectively and have refused to bargain collectively, seems to me a little bit ludicrous when you take into consideration that we have been bargaining for the last three weeks and had some fifty odd issues settled under the new contract and are about to come to the War Labor Board with the others.

Now, I want to again impress this if I may have just a second—upon the Board, that I see this issue to be, as the Trial Examiner does, and as all the parties do, the interpretation of section 9 (a) and the proviso in the subsection. I think it is highly important that it be given by the Board a clear —to the employer and employees as well, to give a clear statement with respect to the rights and direction as to what they should do.

But I contend that the Act itself provides that we individuals have the right to present grievances and we have the corresponding duty to listen and to adjust grievances, which adjustment even goes to arbitration. I don't see how else it can be, and I think our Courts have interpreted that section and have had it up for consideration a number of

times and have had, in each case, said exactly what subsection 9 says itself, the difference between collective bargaining with respect to rates, wages and hours and working conditions and the determination and adjustment of an individual grievance.

You are not affecting collective bargaining or the collective bargaining rights of the majority group when you are determining an individual grievance. It has nothing to do with it. The procedure here is not inconsistent with collective bargaining and the collective bargaining rights of individuals.

Thank you.

The Chairman (Interposing): It doesn't say that nothing beyond the presentation shall happen.

Mr. Kaplan: We believe that the statement contained in the House report answers that rather clearly. It is a one sentence statement that reads——

The Chairman (Interposing): What is the sentence?

Mr. Kaplan: It provides in section 9 (a), expressly stated, that any employee or group of employees shall have the right at any time to present grievances to employers, and the majority rule does not preclude adjustment in individual cases outside the scope of the basic agreement.

In other words, that is outside of wages, hours and other conditions of employment.

The Chairman: Interpreting that, it is for the purpose of presenting for adjustment certain types of grievances; is that your point?

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The Chairman: Interpreting that, it is for the purpose of presenting for adjustment certain types of grievances; is that your point?

Mr. Kaplan: The point is that they are outside the scope.

The Chairman: The limitation is there, outside the scope of the——

Mr. Kaplan: Yes, we have no argument on that principle.

The Chairman: Yes. You couldn't do anything more than present them; no obligation.

Mr. Kaplan: No; we are not contending that matters outside the scope of our jurisdiction can't be adjusted, but that matters which are adjusted which are within the scope of wages, hours and working conditions directly affect the union and will undermine its authority in the plant.

United States of America
Before the National Labor Relations Board

Case No. C-2198

In the Matter of

NORTH AMERICAN AVIATION, INC.

and

UNITED AUTOMOBILE, AIRCRAFT and AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, LOCAL 887, C. I. O.

Mr. John Paul Jennings,
for the Board.
Gibson, Dunn & Crutcher,

by Mr. J. Stuart Neary
and Mr. J. H. Peckham,
of Los Angeles, Calif.,
for the respondent.

Gallagher & Wirin,
by Mr. Victor Kaplan,
of Los Angeles, Calif.,
for the Union.

Miss Grace McEldowney,
of counsel to the Board.

DECISION AND ORDER

Statement of the Case

Upon an amended charge duly filed by United Automobile, Aircraft and Agricultural Implement Workers of America, Local 887, C. I. O., herein

called the Union, the National Labor Relations Board, herein called the Board, by the Regional Director for the Twenty-first Region (Los Angeles, California), issued its complaint dated April 15, 1942, against North American Aviation, Inc., Inglewood, California, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1) and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint, accompanied by notice of hearing, were duly served upon the respondent and the Union.

With respect to the unfair labor practices, the complaint alleged, in substance: (1) that on or about August 12, 1941, at a time when there existed, between the respondent and the Union, a collective bargaining agreement recognizing the Union as the exclusive bargaining representative of the respondent's employees in a unit previously found by the Board to be appropriate and providing a procedure for the settlement and adjustment of disputes arising between the respondent and such employees, the respondent distributed to all the employees in the appropriate unit, without consultation with the Union and without its knowledge, and since August 12, 1941, has given to all new employees, copies of a notice establishing unilaterally a procedure for the adjustment of disputes or grievances arising between the respondent and its employees; (2) that

the procedure thus unilaterally established by the respondent provided that grievances would be handled directly with the employees involved and without the knowledge, consent, or participation of the Union; (3) that, by the issuance of the notice and the establishment of this procedure, the respondent has refused and is refusing to bargain collectively with the Union as the exclusive representative of its employees; and (4) that, by the issuance of the notice and the establishment of this procedure, the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

Pursuant to notice, a hearing was held at Los Angeles, California, on April 27, 1942, before C. W. Whittemore, the Trial Examiner duly designated by the Chief Trail Examiner. The Board, the respondent, and the Union were represented at and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded all parties.

At the opening of the hearing the respondent filed its answer, in which it admitted having engaged in the acts alleged, but denied that said acts constituted unfair labor practices within the meaning of the Act. As an affirmative defense the answer alleged, in substance, that under the contract between the respondent and the Union it was agreed that any individual employee or group of employees should have the right at any time to present griev-

ances to the respondent. Also at the opening of the hearing, the respondent moved that the complaint be dismissed forthwith, on the ground that the acts alleged in the complaint could not lead or tend to lead to labor disputes burdening or obstructing commerce or the free flow of commerce, because the contract between the respondent and the Union provides that disputes shall be arbitrated and that there shall therefore be no strikes or lockouts during the term of the contract. The motion was denied by the Trial Examiner. At the close of the hearing, he reserved ruling upon a renewal of the same motion, which he thereafter denied in his Intermediate Report.[1] During the hearing the respondent offered

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[1] Since Section 10 (a) of the Act provides that the power of the Board to prevent unfair labor practices affecting commerce "shall be exclusive and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise," it is clear that the contract's arbitration provision does not deprive the Board of jurisdiction it would otherwise have. Cf. N.L.R.B. v. Newark-Morning Ledger Co., 120 F. (2d) 266 (C.C.A. 3). The no-strike, no-lock-out provision in the contract is, of course, designed to keep disputes between the parties from interrupting the respondent's operations and thereby burdening or obstructing commerce, but it constitutes no guarantee that such interruptions will not occur. Furthermore, a labor organization's agreement not to strike cannot be regarded as precluding the Board from proceeding under the Act to prevent unfair labor practices; the very purpose of the Act is to remove unfair labor practices before they result in labor disputes affecting commerce.

to prove that only 2 grievances had been handled under the grievance procedure outlined in its notice of August 12, 1941, and that over 800 had been handled under the contract procedure. It also offered to prove that, after the filing of the original charge by the Union, and after consultation by the respondent with the Regional Director, a substitute notice was prepared for distribution, but that it was not distributed because of the issuance of the complaint herein.[2] Both offers of proof were rejected by the Trial Examiner.[3] During the course of the hearing, the Trial Examiner made rulings on other motions and on the admissibility of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed. At the close of the hearing, counsel for the Board, the respondent, and the Union argued orally, on the record, before the Trial Examiner. Briefs were thereafter filed with him by the respondent and the Union.

Thereafter, the Trial Examiner filed his Intermediate Report, dated May 20, 1942, copies of which were duly served upon the parties. He found that

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[2] The respondent admitted that the Union had not been consulted about the proposed substitute notice.

[3] The Board accepts as true the facts which the respondent offered to prove. Assuming their truth, they do not affect the Board's decision as hereinafter set forth.

the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1) and (5) and Section 2 (6) and (7) of the Act, and recommended that the respondent cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. Exceptions to the Intermediate Report were filed by the respondent on June 22, 1942. The respondent and the Union filed briefs on June 29, 1942, and supplemental briefs on July 13, 1942; and on July 23, 1942, the respondent filed a reply to the Union's supplemental brief.

Upon request of the parties and pursuant to notice, a hearing was duly held before the Board in Washington, D. C., on July 14, 1942, for the purpose of oral argument. The respondent and the Union were represented by counsel and participated in the hearing.

The Board has considered the exceptions and briefs filed by the parties and, insofar as the exceptions are inconsistent with the findings, conclusions, and order set forth below, finds them to be without merit.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. The business of the respondent

North American Aviation, Inc., is a Delaware corporation having its principal office and place of business at Inglewood, County of Los Angeles,

California, where it owns and operates a plant for the manufacture of aircraft and aircraft parts and accessories. During 1941 the respondent purchased raw materials valued at more than $17,000,000. Of this total, raw materials valued at more than $15,300,000 were transported to the Inglewood plant from points outside the State of California. During the same period the respondent sold aircraft and aircraft parts and accessories produced by it for a sum in excess of $69,500,000. Of this total, products selling for more than $62,550,000 were transported from its Inglewood plant to States other than California, and to foreign countries.

The respondent concedes that its operations affect commerce, within the meaning of the Act.

II. The organization involved

United Automobile, Aircraft and Agricultural Implement Workers of America, Local 887, is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the respondent.

III. The unfair labor practices

A. The appropriate unit and the majority status of the Union

On January 23, 1941, the Board issued a Decision and Direction of Election in which it found that the respondent's production, inspection, timekeeping, production control, storekeeping, and maintenance employees, with certain specified inclusions and exclusions, constituted an appropriate bargain-

ing unit; and on April 14, 1941, the Board certified International Union, United Automobile Workers of America, Local 683, C.I.O., Aircraft Division, as the exclusive bargaining representative of all such employees.[4] On July 18, 1941, the respondent and Local 683 entered into a collective bargaining agreement, by the terms of which the respondent recognized Local 683 as the exclusive collective bargaining representative of all employees in the appropriate unit. Thereafter the Union, a local of the same parent organization, became the successor to Local 683.[5] Since then, the respondent has recognized the Union as the bargaining representative of its employees in the unit found appropriate by the Board. Neither the appropriateness of that unit nor the representative status of the Union is contested in the present proceeding.

We therefore find, as we did in the prior representation proceeding, that the production, inspection, timekeeping, production control, storekeeping, and maintenance employees at the respondent's

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[4] Matter of North American Aviation, Inc., and International Union, United Automobile Workers of America, Local 683, C. I. O., 29 N.L.R.B. 148 and 30 N.L.R.B. 1196.

[5] Local 683 admitted to membership employees of aircraft companies other than the respondent, as well as employees of the respondent; membership in the Union is restricted to employees of the respondent. For the purposes of this decision the two locals are considered as a single organization and are both hereinafter referred to as the Union.

Inglewood plant, including group and working leadmen, but excluding office workers, employees of the engineering department, welders, plant police, supervisors, officials who have the right to hire and discharge, and all other supervisory employees including and above the rank of assistant foremen, constitute a unit appropriate for the purposes of collective bargaining, and that said unit insures to employees of the respondent the full benefit of their right to self-organization and collective bargaining and otherwise effectuates the policies of the Act. We further find that, at all times since April 14, 1941, the Union has been, and that it now is, the exclusive representative of all the employees in said unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

B. The respondent's grievance procedure

Article V of the contract between the respondent and the Union reads, in part, as follows:

> Grievance Procedure
>
> (1) In the event of any dispute arising regarding the interpretation or application of any of the terms of this agreement or any other request or grievance there shall be no stoppage of work by any employee, and all such matters shall be adjusted according to the following procedure:
>
> (a) Between the agggrieved employee and his foreman or with his representative and his foreman.

(b) Between the district steward and the factory manager or his authorized representative.

(c) Between the plant grievance committee of the shift and the works manager or his authorized representative on that shift.

Other subdivisions of the same article relate to various details of the procedure, including a provision for appeal to the general manager or his authorized representative in any case not satisfactorily adjusted by the plant grievance committee on the shift on which the grievance arose and the management's representative on that shift. Subdivision "(10)," the last subdivision of the article, reads as follows:

(10) No provision of this Article shall be interpreted to prevent any employees or group of employees from presenting grievances to the management in accordance with the provisions of Section 9 (a) of the National Labor Relations Act.[6]

Article VI of the contract makes provision for

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[6] Section 9 (a) of the Act provides that: "Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: Provided. That any individual employee or a group of employees shall have the right at any time to present grievances to their employer."

the arbitration of grievances or disputes with respect to the interpretation or application of any of the terms of the agreement not satisfactorily settled under the grievance procedure.

On August 12, 1941, less than a month after the signing of the agreement with the Union, the respondent distributed to each of its employees in the unit covered by the contract, and since August 12 it has given to each new employee, a copy of the agreement and also a copy of the following notice:

INFORMATION FOR EMPLOYEES

Grievance Procedure

In accordance with the National Labor Relations Act and the policy of North American Aviation, Inc., every employee has the privilege of presenting his grievances directly to the Management.

In order that this procedure may be known to employees, the following steps are outlined:

1. Employees must first take up the matter with their Foreman. If a satisfactory settlement is not reached, the employees may request the presence of a member of the Industrial Relations Department who will help in attempting to adjust the matter.

2. If the complaint is not adjusted satisfactorily, a member of the Industrial Relations Department will arrange a hearing with the Works Manager or his representative.

3. Should the decision of the Works Manager not be satisfactory to the employee, he may, if he so desires, present a written appeal to the President of the Company. The Industrial Relations Department will assist the employee in arranging for the presentation of his case.

4. Should the decision of the President not be satisfactory, and the employee so desires, the matter may be submitted to outside arbitration in a manner mutually acceptable to both the employee and the Company.

The Industrial Relations Staff is available to all employees who may desire information or assistance with respect to their rights or privileges under either company policy or collective bargaining. Employees desiring to contact the Industrial Relations Department may call at the following hours Monday through Friday:

First shift—At the conclusion of the shift.

Second shift—Before the shift starts work.

Third shift—Third shift employees shall ask their Foreman to make arrangements for an appointment. Such matters will receive prompt attention.

NORTH AMERICAN
AVIATION, INC.
J. H. KINDELBERGER,
President

This notice was distributed by the respondent without consultation with, and without the prior knowledge of, the Union, and its distribution has been continued despite the Union's protests. No similar notice had ever been issued to its employees by the respondent prior to the execution of its contract with the Union.

At the hearing, the respondent's industrial relations director admitted that the procedure described in the notice had been put into operation. He also testified that the employees had not been notified of any limitation on the nature or type of grievances that might be submitted thereunder, and that "there would be no limitation on discussing with the employee what he might want to discuss."

C. Conclusions

The issue is whether the respondent's unilateral establishment of a separate procedure for the settlement of grievances presented by employees individually, when there was a grievance procedure already established as a result of collective bargaining between the respondent and the exclusive representative of its employees, constitutes an unfair labor practice within the meaning of the Act.

The respondent contends that a right on its part to set up a procedure for the settlement of individual grievances is implied in the proviso to Section 9 (a) of the Act, which states that "any individual employee or a group of employees shall have the right at any time to present grievances to their employer." We do not agree. Except insofar as the

proviso impliedly leaves an employer free, even after an exclusive representative of his employees has been duly designated, to receive and act upon grievances individually presented by employees, it does not purport to confer any rights on employers. It merely preserves for employees the right to present grievances individually to their employer, despite their designation of a collective bargaining representative. Article V, subdivision (10) of the contract between the respondent and the Union did no more.

There is no distinct cleavage between collective bargaining and the settlement of grievances, whether individual or group. Grievances and grievance procedure are normal and proper subjects of collective bargaining.[7] Indeed, if that were not so, the proviso

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[7] See Matter of Cities Service Oil Company and National Maritime Union of America, C.I.O., 25 N.L.R.B. 36, 44, enf'g in part, N.L.R.B. v. Cities Service Oil Co., 122 F. (2d) 149 (C.C.A. 2), in which we held that, "since grievances concern 'conditions of work' within the meaning of Section 9(a) of the Act, they are proper subjects for collective bargaining." See also Matter of Mooresville Cotton Mills and Local No. 1221, United Textile Workers of America, 2 N.L.R.B. 952, enf'g as mod., 110 F. (2d) 179 (C.C.A. 4); Matter of Wallace Manufacturing Company, Inc. and Local No. 2237, United Textile Workers of America, 2 N.L.R.B. 1081, enf'g, 95 F. (2d) 818 (C.C.A. 4); Matter of Corn Products Refining Company and United Cannery, Agricultural, Packing and Allied Workers of America, Local 169, 22 N.L.R.B. 824; Matter of The New York Times Company, a Corporation and Newspaper Guild of New York, 26 N.L.R.B. 1094.

to Section 9 (a) of the Act would not have been necessary. The respondent, itself, has recognized that it is so, by negotiating with the Union regarding a grievance procedure and by providing in its contract with the Union for such a procedure. The respondent thereby obligated itself to follow the procedure thus established. By the same token, the contract, including its provisions for a grievance procedure, is binding upon all the respondent's employees in the appropriate unit, since the Union in negotiating and entering into the contract was, under the Act, representing all of them. This does not, of course, restrict their right to present grievances individually, in accordance with the proviso to Section 9 (a) of the Act.

In short, the establishment of a grievance procedure is a matter of collective bargaining and, when a grievance procedure has been established by agreement between the employer and the collective bargaining representative, it is binding on both the employer and all employees in the appropriate unit. Consequently, the respondent's establishment of another grievance procedure, without consultation with the bargaining representative of its employees, constitutes both a refusal to deal exclusively with that representative and an interference with the right of the employees to bargain collectively through representatives of their own choosing.

Moreover, a collective contract is not complete as originally negotiated, nor is the process of collective bargaining complete upon the execution of a

contract. After a contract has been negotiated and executed, it is continuously modified and supplemented by interpretations and precedents made by employer and employees from day to day in the course of their operations under the contract. This interpretation of the contract, no less than its negotiation, constitutes an integral part of the collective bargaining process.[8]

Disputes regarding the meaning or application of a collective contract ordinarily arise as grievances, and are therefore settled through the grievance procedure. But, whether grievances are presented to the employer and are handled by the collective bargaining representative or by individual employees or groups of employees, they must be settled in accordance with the provisions and interpretation of the contract between the employer and the exclusive bargaining representative by

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[8] "The written contract is a general constitution upon which a body of industrial law is built. The rules and regulations first set forth in the contract are elaborated and changed from day to day in the settlement of grievances and the interpretation of the contract. Gradually they evolve into a body of industrial common law, developed in a democratic manner." Clinton S. Golden and Harold J. Ruttenberg, The Dynamics of Industrial Democracy, p. 43.

which the terms of employment of all the employees are established.[9]

Similarly, while employees have the right under Section 9 (a) of the Act to present grievances individually, such grievances must be disposed of in accordance with the contract provisions and all the precedents and interpretations established by the method mutually agreed on by the employer and the exclusive representative of his employees. Any other disposition of grievances would constitute and encourage individual bargaining, pursuant to which, in settling an individual grievance, an employer might vary a substantive provision of his

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[9] "Collective bargaining is the process whereby representatives of a union meet with an employer or representatives of an employers' association to fix the terms of employment for a certain period of time. But it includes more than the creation of an agreement * * * It involves also the enforcement and interpretation of the agreement throughout the months of its duration." Carroll R. Daugherty, Labor Problems in American Industry, 1938 (Revised Edition), p. 450. See also N.L.R.B. v. Sands Mfg. Co., 306 U.S. 332, in which the Supreme Court said: "The legislative history of the Act goes far to indicate that the purpose of the statute was to compel employers to bargain collectively with their employees to the end that employment contracts binding on both parties should be made. But we assume that the Act imposes upon the employer the further obligation to meet and bargain with his employees' representatives respecting proposed changes of an existing contract and also to discuss with them the true interpretation if there is any doubt as to its meaning."

agreement with the exclusive bargaining representative. Such individual bargaining would undermine the entire process of collective bargaining, contrary to the basic policy of the Act to encourage "the practice and procedure of collective bargaining."

In the present case, the respondent's employees, prior to the issuance of the notice of August 12, 1941, had not only selected a collective bargaining representative, but through that representative had agreed on a procedure for settling grievances, specifically including disputes arising "regarding the interpretation or application of any of the terms" of the agreement. By its notice, however, the respondent established a second procedure, which in its operation would necessarily involve interpretation of the contract by the employer dealing with individual employees or by an arbitrator agreed on by the employer and the employee involved. This procedure was referred to as the "company policy," thus implicitly expressing the respondent's preference for it and inviting the employees to use it rather than the contract procedure. Moreover, as part of the procedure, the respondent designated its industrial relations department to assist employees in presenting grievances and in effect made that department their representative, although the Act makes no provision for representation except by the exclusive representative. By the above conduct, the respondent clearly refused to deal exclusively with the Union and interfered with the rights

of its employees to self-organization and to bargain collectively through representatives of their own choosing.

We find that the respondent, by the issuance of the notice of August 12, 1941, and by the establishment of the grievance procedure described therein, refused and is refusing to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit. We further find that the respondent, by the issuance of said notice and the establishment of said procedure, interfered with, restrained, and coerced, and is interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

IV. The effect of the unfair labor practices upon commerce

The activities of the respondent set forth in Section III, above, occurring in connection with the operations of the respondent described in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The remedy

Having found that the respondent has engaged in certain unfair labor practices, we shall order it to cease and desist therefrom and to take certain affirmative action which we find will effectuate the policies of the Act.

We have found that the respondent, by the issuance of the notice of August 12, 1941, and by the establishment of the grievance procedure described therein, has refused to bargain collectively with the Union. We shall therefore order the respondent to inform its employees that the notice of August 12, 1941, is null and void and that the respondent will give no effect to the grievance procedure thereby established. We shall also order the respondent, upon request, to bargain collectively with the Union as the exclusive representative of its employees within the appropriate unit.

Upon the basis of the foregoing findings of fact and upon the entire record in the case, the Board makes the following:

CONCLUSIONS OF LAW

1. United Automobile, Aircraft and Agricultural Implement Workers of America, Local 887, C.I.O., is a labor organization, within the meaning of Section 2 (5) of the Act.

2. The production, inspection, timekeeping, production control, storekeeping, and maintenance employees at the respondent's Inglewood plant, including group and working leadmen, but excluding office workers, employees of the engineering department, welders, plant police, supervisors, officials who have the right to hire and discharge, and all other supervisory employees including and above the rank of assistant foremen, constitute a unit ap-

propriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

3. United Automobile, Aircraft and Agricultural Implement Workers of America, Local 887, C.I.O., or its predecessor, International Union, United Automobile Workers of America, Local 683, C.I.O., Aircraft Division, was on August 12, 1941, and at all times thereafter has been the exclusive representative of all the employees in such unit for the purposes of collective bargaining, within the meaning of Section 9 (a) of the Act.

4. By refusing on August 12, 1941, and at all times thereafter, to bargain collectively with United Automobile, Aircraft and Agricultural Implement Workers of America, Local 887, C.I.O., as the exclusive representative of its employees in the appropriate unit, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (5) of the Act.

5. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, North American Aviation, Inc., Inglewood, California, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with United Automobile, Aircraft and Agricultural Implement Workers of America, Local 887, C.I.O., as the exclusive representative of all production, inspection, timekeeping, production control, storekeeping, and maintenance employees at the respondent's Inglewood plant, including group and working leadmen, but excluding office workers, employees of the engineering department, welders, plant police, supervisors, officials who have the right to hire and discharge, and all other supervisory employees including and above the rank of assistant foremen;

(b) Distributing to its employees copies of its notice of August 12, 1941, above described, or of any similar notice, and from giving effect to the grievance procedure thereby established;

(c) Engaging in any like or related acts or conduct interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their

own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with United Automobile, Aircraft and Agricultural Implement Workers of America, Local 887, C.I.O., as the exclusive representative of all production, inspection, timekeeping, production control, storekeeping, and maintenance employees at the respondent's Inglewood plant, including group and working leadmen, but excluding office workers, employees of the engineering department, welders, plant police, supervisors, officials who have the right to hire and discharge, and all other supervisory employees including and above the rank of assistant foremen, in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(b) Inform in writing each of its employees who has been given a copy of the notice of August 12, 1941, that said notice is null and void and that the respondent will give no effect to the grievance procedure described therein;

(c) Post immediately in conspicuous places throughout its Inglewood plant, and maintain for a period of at least sixty (60) consecutive days from

the date of posting, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a), (b), and (c) of this Order; and (2) that the respondent will take the affirmative action set forth in paragraphs 2 (a) and (b) of this Order;

(d) Notify the Regional Director for the Twenty-first Region in writing, within ten (10) days from the date of this Order, what steps it has taken to comply herewith.

Signed at Washington, D. C., this 29 day of September 1942.

[Seal]

HARRY A. MILLIS
Chairman
WM. M. LEISERSON
Member
NATIONAL LABOR
RELATIONS BOARD

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 10313

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

NORTH AMERICAN AVIATION, INC.
Respondent.

PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Ninth Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act (Act of July 5, 1935, 49 Stat. 449, c. 372, 29 U.S.C. § 151 et seq.), respectfully petitions this Court for the enforcement of its order against respondent, North American Aviation, Inc., Inglewood, California, and its officers, agents, successors, and assigns. The proceeding resulting in said order is known upon the records of the Board as "In the Matter of North American Aviation, Inc., and United Automobile, Aircraft and Agricultural Implement Workers of America, Local 887, C.I.O., Case No. C-2198."

In support of this petition, the Board respectfully shows:

(1) Respondent is a Delaware corporation, en-

gaged in business in the State of California, within this judicial circuit, where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act.

(2) Upon all proceedings had in said matter before the Board, as more fully shown by the entire record thereof certified by the Board and filed with this Court herein, to which reference is hereby made, and including, without limitation, complaint and notice of hearing, respondent's answer to complaint, hearing for the purpose of taking testimony and receiving other evidence, Intermediate Report, respondent's exceptions thereto, order transferring case to the Board, and oral argument before the Board, the Board, on September 29, 1942, duly stated its findings of fact, conclusions of law and issued an order directed to the respondent and its officers, agents, successors, and assigns. The aforesaid order provides as follows:

ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent North American Aviation, Inc., Inglewood, California, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with United Automobile, Aircraft and Agricultural

Implement Workers of America, Local 887, C.I.O., as the exclusive representative of all production, inspection, timekeeping, production control, storekeeping, and maintenance employees at the respondent's Inglewood plant, including group and working leadmen, but excluding office workers, employees of the engineering department, welders, plant police, supervisors, officials who have the right to hire and discharge, and all other supervisory employees including and above the rank of assistant foremen;

(b) Distributing to its employees copies of its notice of August 12, 1941, above described, or of any similar notice; and from giving effect to the grievance procedure thereby established;

(c) Engaging in any like or related acts or conduct interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with United Automobile, Aircraft and Agricultural

Implement Workers of America, Local 887, C.I.O., as the exclusive representative of all production, inspection, timekeeping, production control, storekeeping, and maintenance employees at the respondent's Inglewood plant, including group and working leadmen, but excluding office workers, employees of the engineering department, welders, plant police, supervisors, officials who have the right to hire and discharge, and all other supervisory employees including and above the rank of assistant foremen, in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(b) Inform in writing each of its employees who has been given a copy of the notice of August 12, 1941, that said notice is null and void and that the respondent will give no effect to the grievance procedure described therein;

(c) Post immediately in conspicuous places throughout its Inglewood plant, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a), (b), and (c) of this Order; and (2) that the respondent will take the affirmative action set forth in paragraphs 2 (a) and (b) of this Order;

(d) Notify the Regional Director for the Twenty-first Region in writing, within ten (10)

days from the date of this Order, what steps it has taken to comply herewith.

(3) On September 29, 1942, the Board's decision and order was served upon respondent by sending a copy thereof postpaid, bearing Government frank, by registered mail, to Messrs. Neary, Powers, and Peckham, Jr., respondent's attorney in Los Angeles, California.

(4) Pursuant to Section 10 (e) of the National Labor Relations Act, the Board is certifying and filing with this Court a transcript of the entire record in the proceeding before the Board, including the pleadings, testimony and evidence, findings of fact, conclusions of law, and order of the Board.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon respondent and that this Court take jurisdiction of the proceedings and of the questions determined therein and make and enter upon the pleadings, testimony and evidence and the proceedings set forth in the transcript, and the order made thereupon set forth in paragraph (2) hereof, a decree enforcing in whole said order of the Board and requiring respondent, and its officers, agents, successors, and assigns to comply therewith.

NATIONAL LABOR RELATIONS BOARD
By ERNEST A. GROSS
Associate General Counsel

Dated at Washington, D. C., this 17th day of November, 1942.

District of Columbia—ss:

Ernest A. Gross, being first duly sworn, states that he is Associate General Counsel of the National Labor Relations Board, petitioner herein, and that he is authorized to and does make this verification in behalf of said Board; that he has read the foregoing petition and has knowledge of the contents thereof; and that the statements made therein are true to the best of his knowledge, information and belief.

ERNEST A. GROSS
Associate General Counsel

Subscribed and sworn to before me this 17th day of November, 1942.

[Seal] JOSEPH W. KULKIS
Notary Public, District of Columbia.

My Commission expires April 15, 1947.

[Endorsed]: Filed Nov. 24, 1942.

ORDER TO SHOW CAUSE

CCA No. 10313

United States of America—ss:

The President of the United States of America

To North American Aviation, Inc., 223 East Regen St., Inglewood, California, and United Automobile, Aircraft and Agricultural Implement Workers of America, Local 887, C.I.O., 5851

South Avalon Blvd., Los Angeles, California, Greeting:

Pursuant to the provisions of Subdivision (e) of Section 160, U.S.C.A. Title 29 (National Labor Relations Board Act, Section 10(e)), you and each of you are hereby notified that on the 23rd day of November, 1942 a petition of the National Labor Relations Board for enforcement of its order entered on September 29, 1942 in a proceeding known upon the records of the said Board as "In the Matter of North American Aviation, Inc., and United Automobile, Aircraft and Agricultural Implement Workers of America, Local 887, C.I.O., Case No. C-2198," and for entry of a decree by the United States Circuit Court of Appeals for the Ninth Circuit, was filed in the said United States Circuit Court of Appeals for the Ninth Circuit, copy of which said petition is attached hereto.

You are also notified to appear and move upon, answer or plead to said petition within ten days from date of the service hereof, or in default of such action the said Circuit Court of Appeals for the Ninth Circuit will enter such decree as it deems just and proper in the premises.

Witness, the Honorable Harlan Fiske Stone, Chief Justice of the United States, this 24th day of November, in the year of our Lord one thousand, nine hundred and forty-two.

[Seal] PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

RETURN ON SERVICE OF WRIT

United States of America,
Southern District of California—ss.

I hereby certify and return that I served the annexed Order to Show Cause and copy of Petition on the therein-named United Aut. Aircraft and Agricultural Implement Workers of America, Local 887, C.I.O., by handing to and leaving a true and correct copy with Lew Michener, West Coast Director, personally at 5851 Avalon Block, Los Angeles, Cal., in said District on the 26th day of Nov., 1942.

ROBERT E. CLARK,
U. S. Marshal.
By FRANK L. BESSER,
Deputy

RETURN ON SERVICE OF WRIT

United States of America,
Southern District of California—ss.

I hereby certify and return that I served the annexed Order to Show Cause and Certified Copy of Petition on the therein-named North American Aviation, Inc., by handing to and leaving a true and correct copy thereof with S. G. Anspach, Treas., personally at 223 E. Regen St., Inglewood, Calif., in said District on the 3rd day of Dec., 1942.

ROBERT E. CLARK
U. S. Marshal
By FRANK L. BESSER
Deputy

[Title of Circuit Court of Appeals and Cause.]

ANSWER TO PETITION FOR ENFORCEMENT

To the Honorable Chief Justice and Associate Justices of the United States Circuit Court of Appeals for the Ninth Circuit.

Respondent, North American Aviation, Inc., for answer to the petition for enforcement of an order against Respondent filed herein by the National Labor Relations Board, respectfully shows:

I.

The order of said Board for which an order of enforcement is sought is improper, void and in excess of the jurisdiction of the Board for the following reasons:

1. There was no proof before the Board that any act complained of constituted an unfair labor practice on the part of Respondent or interfered with or restrained or had a tendency to interfere with or restrain, commerce.

2. The decision of the Board is based upon assumed issues and charges which are entirely beyond the allegations of the complaint and without basis in the evidence.

3. The decision is in conflict with the proviso of Section 9(a) of the National Labor Relations Act granting to individual employees or minority elements the right of individual presentation of griev-

ances. The right of presentation of grievances implies the right to obtain adjustment thereof, even by arbitration when necessary.

4. The decision is in violation of the provisions of the contract between Respondent and the Union providing for individual grievance presentation and also providing for settlement by arbitration of any grievance or dispute with respect to the interpretation or application of any of the terms of said contract.

5. The order of the Board is too broad. The sole issue was the propriety of the particular notice given by the employer with respect to individual grievance presentation. There is no issue and no proof of any refusal to bargain collectively.

Dated: Los Angeles, California, December 1, 1942.

GIBSON, DUNN & CRUTCHER
By J. STUART NEARY
Attorneys for North American Aviation, Inc.
IRA C. POWERS
Of Counsel.

(Duly Verified.)

Copy mailed to Attorney for Petitioner Dec. 11, 1942.

[Endorsed]: Filed Dec. 12, 1942.

Before The National Labor Relations Board
Twenty-First Region

Case No. XXI-C-1864

In the Matter of:

NORTH AMERICAN AVIATION, INC.
and
UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, LOCAL 887, C.I.O.

PROCEEDINGS

Room 808, United States Court House and Post Office Building, Spring, Temple and Main Streets, Los Angeles, California, Monday, April 27, 1942.

The above-entitled matter came on for hearing, pursuant to notice, at 10:00 o'clock a.m.

Before:

Charles W. Whittemore, Trial Examiner. [1*]

Mr. Jennings: It is stipulated between all parties that the allegations of paragraphs IV, V and VI of the complaint, and the allegations of paragraph VII down to and including the end of the third sentence thereof are true and correct and that the Board may so find. [9]

And for the purpose of clarity, I should like to read the portion of Paragraph 7 that is stipulated between all parties to be true:

"Respondent by its officers and agents, while engaged as described in paragraphs 1, 2, and 3

* Page numbering appearing at top of page of original Reporter's Transcript.

hereof, on or about August 12, 1941, distributed to all of its employees within the unit covered by its contract with the union a notice, a true and correct copy of which is attached hereto, marked Exhibit "B", and incorporated herein by reference as though fully set forth herein, and a copy of said contract, Exhibit "A", attached hereto. Said notice was distributed without consultation with, or notification of the union, and without the knowledge of the union. Since August 12, 1941, respondent has given a copy of said notice and of said contract to each employee upon his employment."

Mr. Neary: So stipulated.

Mr. Kaplan: So stipulated.

Mr. Jennings: It is further stipulated that Exhibit "A" attached to the complaint, and referred to in Paragraph 6 of the answer is a true and correct copy of that document, that Exhibit "B" attached to the complaint referred to in Paragraph 7 thereof is a true and correct copy of that document.

Mr. Neary: The one attached to the complaint, Exhibit [10] "A", is a printed copy?

Mr. Jennings: That is correct.

Mr. Neary: So stipulated. With a change in Exhibit "B" which you mentioned in there.

Mr. Jennings: That is right.

I should like to call to the attention of the Trial Examiner, and for the record, the fact that the notice, Exhibit "B", attached to the complaint, a copy of which is also attached to the charge, has a cor-

rection made in ink on the face of it in paragraph No. 2, the third and last sentence. The language should be: "Works manager or his representative" instead of "Works manager of his representative."

Mr. Neary: I wonder if I could see that for just a minute.

Mr. Jennings: Surely.

Mr. Neary: So stipulated.

Mr. Kaplan: So stipulated.

Mr. Jennings: May it be further stipulated between all parties, referring now to Paragraph 5 of the complaint, that the proceedings before the National Labor Relations Board under Section 9 (c) of the Act referred to therein are reported in the following volumes of National Labor Relation Board decisions and orders: That the decision and direction of election in the matter, issued January 23, 1941, is reported [11] in Volume 29, National Labor Relations Board Decisions and Orders No. 27; that the supplemental decision, and second direction of election, issued February 28, 1941, is reported in Volume 29, National Labor Relations Board Decisions and Orders, No. 27-A; and that Board's certification of the union issued April 14, 1941, is reported in Volume 30, National Labor Relations Board Decisions and Orders, No. 169.

Mr. Neary: I haven't checked those, but I am perfectly willing to stipulate on Mr. Jenning's statement that is where they are reported.

Trial Examiner Whittemore: You are willing to accept that?

Mr. Kaplan: I am, yes.

Trial Examiner Whittemore: I assume, of course, that if the Board discovers that Mr. Jennings has misquoted the number of those volumes, that the Board will have the privilege of correcting them.

Mr. Jennings: I have the copies right here, Mr. Examiner. I don't think there is any question about them.

Trial Examiner Whittemore: I don't think there is any question about it. There may be a typographical error or something. The decisions are at issue, not the numbers.

Mr. Jennings: And it is further stipulated by all parties that the Board may find to be true all of the facts [12] so stipulated to be true?

Mr. Neary: Yes, so stipulated.

Mr. Kaplan: So stipulated. [13]

Mr. Neary: The respondent desires to move to dismiss the complaint—this motion to dismiss is more in the nature of a general demurrer to the complaint—on the ground that the complaint does not state facts sufficient to sustain a charge or finding that an unfair labor practice has been committed.

The complaint alleges that the respondent is guilty of two acts of unfair labor practice: First, a violation of 8 (1); secondly, a violation of 8 (5). And the acts respondent is accused of are the publication and distribution of the [14] notice which is set forth in the complaint as Exhibit B, which in effect sets forth a procedure, which the company

will follow in handling grievances of employees who do not desire to submit for adjustment their grievances through the union's steward, and the procedure outlined in Articles 5 and 6 of the contract betwen the parties, which is attached to the complaint as Exhibit A.

The complaint alleges, in substance, that the acts complained of are unfair labor practices in that they have a close and intimate relationship to commerce and have led, and tend to lead, to labor disputes burdening or obstructing commerce.

Exhibit A, the contract between the parties, was first a negotiated contract. I don't think there is any issue with respect to that. The company recognizes Local 887, or it was 683 in the certification, an amalgamated local, which later was broken up into a separate local and a charter to 887 was granted, but the company has recognized 887 as the collective bargaining agent for its employees in the unit described in the certification; and, as a result of that recognition, sat down with the union and negotiated this contract, Exhibit A.

Article 5 of that contract sets forth a grievance procedure. Going through the grievance procedure, as set forth in Article 5, we find that in all cases, except in [15] paragraph 1 (a), the employee must present his grievance in the other steps of the procedure through a district steward or other union representative. The first step reads as follows: "Between the aggrieved employee and his foreman or with his representative and his foreman.

"Between the district steward and the factory

manager——" after that step, the grievance must be presented according to the terms of Article 5 through the union representative.

At the time of the negotiations, the question arose as to whether or not employees had a right to present grievances individually without the representation of the union. That was admitted by the union and pursuant to that agreement, paragraph 10 of Article 5 was incorporated expressly in the agreement. This article reads: "No provision of this article shall be interpreted to prevent any employees or group of employees from presenting grievances to the management in accordance with the provisions of Section 9 (a) of the National Labor Relations Act." Which section provides that the individual employee, or group of employees, may present grievances to the management for adjustment.

The reason the paragraph was specifically put in there was because, as appears from Article 5, every step of the grievance procedure, after the first, required that the grievance be presented through the union steward rather than through the individual employee. That fact being true, and [16] this provision having been negotiated and this fundamental right having been agreed upon by the parties, there cannot be any unfair labor practice here even though you admit all of the facts alleged in the complaint, which first leads or tends to lead to a labor dispute, which burdens or obstructs commerce.

The reason being that in Article 6, paragraph 1, the article provides:

> "If a grievance or dispute with respect to the interpretation or application of any of the terms of this agreement is not satisfactorily settled, either party to this contract shall request that the matter be submitted for settlement to arbitration. If such request is made, the other party shall also agree to submit the matter to arbitration, and it is understood and agreed that the decision of the arbitration board, as provided for in this article, shall be final and binding upon both parties, and therefore it is agreed that during the term of this agreement the union or its members shall not call or engage in, sanction, or assist in, any sympathy strike against, or any slow-down or stoppage of work, of the company, and the union will require its members to perfom their services for the company when required by the company to do so, and during [17] the term of this agreement, the company shall not cause or permit any lockout of the members of the union."

There is no allegation in this complaint that the union involved ever presented to the procedures set forth in articles 5 and 6 of the contract this question with reference to the interpretation of paragraph 10, article 5.

Fundamentally, the parties have agreed by paragraph 10, article 5, that employees can present

grievances individually. If employees can present grievances individually there must be some procedure by which those grievances will be received and adjusted by the company, otherwise you run into the practical difficulty of a settlement of grievances which is not uniform, and which may be interpreted or may actually be discriminatory as between individual employees. [18]

Secondly, if you do set up such a procedure for the receipt and adjustment of individual grievances, the procedure is worthless unless it is made known to the employees. Now, that is the position the company took. Let us assume, however, that the union disagreed that the company had the right, first, to set up a procedure other than the procedure set forth in Article 5 for the handling of grievances. The union then had a dispute with the company with respect to the interpretation of Paragraph 10 of Article 5, and had the right to have the matter adjusted according to the provisions of Article 5 and Article 6; adjusted, so that there would be no question of stoppage of work.

Suppose that the union contended that there were sufficient provisions in Article 5 for the handling of individual grievances and that no different procedure need be set up, and no other notice need be given except the fact that the procedure for handling individual grievances would be the same as that set up in Article 5, except that the individual employee would be without the representation of the district steward or the plant grievance

committee connected with the union. Again a dispute with reference to the interpretation of Paragraph 10 of Article 5: a dispute which, according to the provisions of the contract, may be settled and must be settled amicably and without any possibility of a labor dispute except in violation of the [19] terms of the contract.

Let us assume that the union took the stand that Paragraph 10 of Article 5 should not be interpreted as to give the right to individual employees to present, individually, grievances for adjustment. Again, a dispute to the interpretation of Paragraph 10 of Article 5, which, according to their own agreement, must be settled according to the provisions of Article 5 and Article 6. As a matter of fact, this question was a subject of grievance, as we will later develop in our testimony, if required to do so, and it went through the fourth step of grievance. We had an arbitrator chosen here to handle other matters and the union did not elect to submit this matter to arbitration.

I contend that there is no allegation in the complaint which shows that this Board has jurisdiction under the provisions of the National Labor Relations Act to make a charge of unfair labor practice, because there is no possibility of dispute leading or tending to lead to a labor dispute which would obstruct or burden commerce.

Trial Examiner Whittemore: May I interrupt just for a moment?

Mr. Neary: Yes.

Trial Examiner Whittemore: Perhaps I misunderstood you. It is my understanding of what you said that this was put through that step of arbitration and then, as I understood, [20] the union did not elect to present this point for arbitration.

Mr. Neary: I probably have misstated myself.

This question of the publication of this notice was made a subject of grievance and put through to the fourth step. That is, the provisions of the procedure set fourth in Article 5, which we call the four steps of grievance procedure, and the union did not avail itself of arbitration in Article 6, although other disputes were pending and were arbitrated, and an arbitrator had been appointed by the parties and, as a matter of convenience, they could have easily thrown this dispute in for arbitration at the same time.

Trial Examiner Whittemore: Have you finished now?

Mr. Neary: Yes.

I move that the complaint be dismissed on the ground that the allegations of the complaint do not show any unfair labor practice within the meaning of the National Labor Relations Act. [21]

Mr. Neary: I will stipulate that Local 683, which was [22] the certified local, was an amalgamated local, which admitted to its membership not only employees of North American Aviation, Inc., but employees of other aircraft companies as well; and that subsequent to the certification, and subsequent

to the signing of the contract, the members of Local 683, employees of North American Aviation, Inc., at Inglewood, petitioned the International for a separate charter and that that petition was granted and that Local 887 is the successor of 683, so far as the employee members at North American Aviation, Inc. is concerned. Did I state that correctly?

Mr. Kaplan: That is a correct statement.

Mr. Jennings: That is what I intended to say. May that be stipulated to by all parties?

Mr. Kaplan: Yes.

Mr. Neary: Yes.

Trial Examiner Whittemore: Mr. Neary, have you anything further?

Mr. Neary: Yes. I would like to point out that Section [23] 10 (a) and (b) of the Act is not an answer to my motion to dismiss. We are not contending that the contract here sets up a different method of determining whether an unfair labor practice exists than that set forth in the Act. We are not attempting to deprive the Board of any jurisdiction. What we are saying, and what Section 10 talks about is an unfair labor practice listed in Section (a) affecting commerce; and there is no such thing as an unfair labor practice under the terms of the Act that does not affect commerce and have a tendency or will lead to a labor dispute affecting commerce. Now, we are not attempting to dispute with the Board its jurisdiction and allege that the union and ourselves can set up a method by which we can settle questions of unfair labor practices that exist between us.

What we are fundamentally saying is this: that no unfair labor practice existed over which the Board has jurisdiction because the method provided in the contract for the settling of any dispute between the parties, no matter what it may be, prevents, by agreement of the parties, any such disputes causing or tending to cause, or leading or tending to lead to a dispute which would burden or obstruct commerce.

I agree that the Board has the right to determine its own question of jurisdiction, and that is the reason that I am addressing my motion to the Board at this time. [24]

Mr. Neary: May I just for the purpose of the record add one further ground?

Trial Examiner Whittemore: Surely.

Mr. Neary: Which is that it was the purpose of Congress [25] in enacting the National Labor Relations Act to promote collective bargaining and collective agreements between the parties in an effort to avoid disputes which would affect or burden commerce, and, therefore, that this complaint, the allegations in the complaint, do not sustain a charge of unfair labor practice unless it is alleged that the parties have been unable to settle their dispute according to the provisions of the contract, the collective agreement, arrived at by the parties through the procedure set forth in the Act; and that their failure to do so threatens to burden or obstruct commerce. [26]

J. STUART NEARY,

called as a witness by and on behalf of the respondent, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Peckham) State your full name.

A. J. Stuart Neary.

Q. You are an attorney licensed to practice before the courts of California and in the District Courts of the United States? A. Yes.

Q. And you are associated with the firm of Gibson, Dunn & Crutcher? A. I am.

Q. The firm of Gibson, Dunn & Crutcher represents North American in certain matters? [29]

A. Yes; in advice and consultation on labor relations.

Q. You are the associate of that firm assigned by it to advise North American Aviation, Inc., on these matters? A. I am.

Q. Calling your attention to Exhibit A, the contract which is Exhibit A attached to the complaint, entered into between North American Aviation, Inc. and the union involved in this proceeding, which purports to have been executed on the 18th day of July, 1941, did you take part in the negotiation of that contract?

A. Yes; as legal representative of the corporation.

Q. Were there any other representatives of North American Aviation, Inc. present during all of the negotiations leading up to that contract?

(Testimony of J. Stuart Neary.)

A. No.

Q. When were those negotiations finally consummated?

A. On July 1, 1941, with the exception of certain matters, editorial changes that were effectuated between July 1st and July 18, 1941.

Q. Where did those negotiations take place, Mr. Neary?

A. The negotiations started at the company plant at Inglewood, California, and the actual negotiations, which resulted in the agreement, particularly, with reference to Article 5 and Article 6 of the contract were consummated in the new Social Security Building, Washington, D. C. on July 17 [30] and 18, 1941 in the offices of the National Defense Mediation Board.

The persons present at the time these were negotiated were Mr. Richard T. Frankensteen, international representative of the U.A.W.A.-C.I.O.; Mr. Victor H. Kosche and Charles Dorchester, representatives of Local 683; and for the company, Mr. J. H. Kindelberger, president of North American Aviation, Inc., and myself.

Q. You have referred to negotiations of Article 5 and Section 6, Mr. Neary. Would you advise the Examiner as to the extent of those negotiations, particularly, with reference to the inclusion of items relating to the individual grievances in those articles?

Mr. Jennings: Mr. Examiner, I should like at

(Testimony of J. Stuart Neary.)

this point to make an objection upon the ground that the agreement, and particularly Article 5, paragraph 10, is clear and parol evidence is inadmissible to vary, alter, or contradict terms of it; and further upon the ground that Article 12 of the contract, Exhibit A in evidence, expressly provides that the agreement contains all of the covenants, stipulations, and provisions agreed upon by the parties, and no representative of either party has authority to make, and none of the parties shall be bound by, any statement, representations, or agreements not set forth here. That is in the terms of the contract. [31]

The Witness: Mr. Examiner, may I answer the objection? I am better prepared than Mr. Peckham to do so.

Trial Examiner Whittemore: I have no objection.

The Witness: I am not introducing the testimony with respect to the negotiations in an attempt to vary, alter or change the terms of this written agreement. The issue is not an issue affecting the rights of the parties under the terms of the agreement, but is rather a background of the negotiations to show why the provisions of paragraph 10, article 5, were included; and to prove further that the question as to whether or not individual employees would have a right under the terms of the contract to present grievances, individually, was recognized and negotiated by the parties.

(Testimony of J. Stuart Neary.)

Trial Examiner Whittemore: As I understand it, all of this, you assure me, is relevant to the set of facts upon which you base your case.

The Witness: That is correct. And I intend only to make a very short statement.

Trial Examiner Whittemore: The objection is overruled.

Mr. Jennings: I should like to point out that the agreement in evidence, Board's Exhibit A, attached to the complaint, article 5, section 10, refers to the right of individual employees to present grievances, stating that nothing shall be interpreted to prevent any employee from [32] presenting grievances in accordance with the act, whereas Mr. Neary's testimony seems to look toward some agreement aliunde. What we have here would provide for an adjustment or settlement of the grievances, not merely a presentation of them.

The Witness: I think you are anticipating the testimony and I suggest that a motion to strike after I have put my testimony in could be made on that ground.

Mr. Jennings: The very general nature of the question requires my objection.

Trial Examiner Whittemore: I can't at this time determine what he is going to testify. You still have your motion to strike. Upon his assurance that he will confine himself to matters which he feels are matters as a basis for his position in this case, I feel that I should hear him. That doesn't

(Testimony of J. Stuart Neary.)

deprive you of putting in such facts as are relevant.

Mr. Jennings: The testimony will be taken subject to my objection?

Trial Examiner Whittemore: Surely.

Mr. Kaplan: Mr. Examiner, I would also like to state that the three union members who were present at the negotiations are unavailable at the present time. Two of them are in the United States Navy and one of them is an associate member of the War Labor Board and is in the east. So if [33] the testimony here should become particularly relevant we should like to have permission to obtain testimony from the union members.

Trial Examiner Whittemore: That is a matter which may be——

Mr. Jennings: That is another reason for the rule which I referred to forbidding introduction of such evidence.

Trial Examiner Whittemore: The ruling will stand. How you meet any such testimony which he brings up, which you feel should be met, that is something to be taken up later. So far the point itself is more or less irrelevant to the issues and it can't possibly hurt anyone unless there is some dispute to certain facts. I think you are anticipating matters, perhaps, if you feel that he is going to testify something which your client might say was not so.

I suggest you proceed. Do you recall where you were?

(Testimony of J. Stuart Neary.)

The Witness: Yes.

When the parties reached that point in the negotiations in Washington where they were considering the wording of Article 5 of the contract, the company representatives desired that each of the steps, wording similar to paragraph 1 (a) be used in all cases, namely, that it should show clearly that the step would be between the aggrieved employee and his foreman or with his representative and foreman; between the employee and the factory manager or the district [34] steward; and between the employee and the works manager, or his authorized representative, or the plant grievance committee.

The union objected to that wording. The company representatives argued that it was necessary to set forth in the grievance procedure that individual employees had a right to present grievances according to this procedure without the representation of the district steward or the plant grievance committee. The union representatives agreed that the provisions of Section 9 (a) of the Act gave employees this right, although would not accept the company's wording of the grievance procedure.

A compromise was suggested by myself on the wording of Section 10 so as to exclude the possibility that employees would interpret the wording, for instance, in paragraph 1 (b) of article 5, between the district steward and the factory manager,

(Testimony of J. Stuart Neary.)

as excluding individual employees from taking up a grievance with the factory manager unless he took it up through the district steward and, similarly, excluding him, depriving an individual employee of the right to take a grievance up with the works manager except through the plant grievance committee. And this language was accepted as the compromise to that issue raised.

Trial Examiner Whittemore: Do you mean by that section 10? [35]

The Witness: Paragraph 10 of article 5.

Trial Examiner Whittemore: Yes.

Mr. Jennings: Does that complete the answer so I can make my motion?

The Witness: Yes.

Mr. Jennings: I should like to move to strike the answer upon the grounds of my objection, Mr. Examiner, and upon the further ground that the union could not, under any circumstances, consent to a violation of law. That consent of the union would be immaterial. If this procedure is illegal, it couldn't consent.

Mr. Peckham: If the Examiner please, it appears to me that this testimony merely goes to show the attitude of all the parties concerned in the negotiation of this contract, and also to show the attitude involved in the posting of the notice.

That is just one of the things that is involved in this proceeding. The Examiner wants to get the entire background and entire picture. The Exam-

(Testimony of J. Stuart Neary.)

iner is presenting the matter to a board in Washington, which will have no understanding of these matters unless these things are in the record, and it appears to me to be important to show the background of this whole matter. If you send a cold record back to a group in Washington, they can't see the entire picture.

The Witness: May I further call—— [36]

Trial Examiner Whittemore: First, as I understand it, you are making a motion to strike his answer.

Mr. Jennings: That is right.

Trial Examiner Whittemore: I will deny the motion so it will be unnecessary for any further argument on that.

Q. (By Mr. Peckham) Some time later after the negotiation and signing of this contract, Mr. Neary, did you receive a copy of a proposed notice from Mr. Marshall Beaman of the North American Aviation, Inc.? A. I did.

Q. With regard to what?

Trial Examiner Whittemore: Do you mind if I interrupt you for a moment?

Mr. Peckham: Not at all.

Trial Examiner Whittemore: As you say you are presenting the background and you left a gap here between something which appeared in the signed contract and the notice. This says nothing about a notice. How did you happen to ask for a notice?

(Testimony of J. Stuart Neary.)

Mr. Peckham: If your Honor please, I am attempting to develop that at this point. I felt that there was no sense in taking Mr. Neary off the stand and putting him back and forth and back and forth. We are intending to put Mr. Beaman on and show the events that transpired in between.

Trial Examiner Whittemore: You have that in mind? [37]

Mr. Peckham: That is correct.

Mr. Jennings: Are you referring, Mr. Peckham, to a document which was presented to Mr. Neary, which is here in court?

Mr. Peckham: I don't know whether it is here in court or not. I am not thinking of introducing the notice. I am merely trying to give the background of what happened.

Trial Examiner Whittemore: His question was if at a certain time there was a notice submitted to him by Mr. Beaman. That is my understanding of it in following the sequence of your background.

Mr. Jennings: If there is such a document in existence, of course, the testimony is much——

Trial Examiner Whittemore: I think we can clear that up.

The Witness: I think it will be cleared up.

Trial Examiner Whittemore: On the assurance you are going to clear this matter up I will allow you to answer.

Mr. Peckham: That is what we intend to show, if the Examiner please.

(Testimony of J. Stuart Neary.)

Trial Examiner Whittemore: All right.

The Witness: Yes. I may state in explanation of my answer, Mr. Beaman was not employed by North American Aviation, Inc. until July 15, 1941 as director of industrial relations and subsequent to the negotiation of the contract, a copy [38] of it was gone over by Mr. Beaman and he asked certain questions of explanation of myself and Mr. Kindelberger and Mr. Atwood, who is vice-president and general manager, and was in on some of the negotiation meetings, and Mr. Lambeth, who is the secretary-treasurer of the organization, North American, Inc., who was also in on some of the negotiations.

Among the questions asked was a question with respect to paragraph 10 of article 5 of the contract, a question as to whether or not it was the intention of the parties in negotiating the contract to permit individual employees to present for adjustment grievances without union representation. [39]

My answer to that question was that it was. Mr. Beaman then asked me with respect to——

Mr. Kaplan: I would like to object to this testimony and move to strike the answer on the ground that what transpired between Mr. Neary and Mr. Beaman is purely hearsay so far as the union is concerned.

Trial Examiner Whittemore: My understanding is——

Mr. Jennings: And it is definitely self-serving.

(Testimony of J. Stuart Neary.)

Trial Examiner Whittemore: There was no union representative present?

The Witness: None.

Trial Examiner Whittemore: And you will concede this was your interpretation?

The Witness: That is all I am contending.

Trial Examiner Whittemore: All right. It is simply a matter, as I understand it, which is leading up to the decision to post a notice.

The Witness: That is correct.

Trial Examiner Whittemore: I will deny the motion to strike.

Q. (By Mr. Peckham) Will you proceed, Mr. Neary?

A. Mr. Beaman then suggested that since this might not be clear to all employees that a notice setting out the method of presentation and adjustment of grievances, under the provisions of Section 10, Article 5, be posted. Mr. Beaman [40] then prepared a notice, substantially in the form of Exhibit "B", attached to the complaint, and submitted it to me for my review. I reviewed it and approved it.

The notice was then printed in booklet form, or in mimeographed form, as you have a copy there, and was distributed to all employees, together with a copy of the contract, which is Exhibit "A".

Q. Subsequent to that time, Mr. Neary, you were notified by North American Aviation that they had received a charge of an unfair labor practice from

(Testimony of J. Stuart Neary.)

the National Labor Relations Board; is that correct? A. That is correct.

Q. In regard to the posting of this notice?

A. That is correct.

Mr. Jennings: Pardon me. You say "posting". Was this notice posted as well as distributed?

The Witness: I think that is incorrect. I think it was distributed.

Mr. Peckham: May I amend my remark for the record?

Trial Examiner Whittemore: Before you go into that, I would like to ask just how this was distributed, if you know.

The Witness: I think Mr. Beaman would be better qualified to testify.

Trial Examiner Whittemore: Would you make a note of that [41] and bring that matter out?

The Witness: I will bring that out.

Mr. Peckham: I repeat, may I ask that my remark be amended to say "distributed" rather than "posted"?

Trial Examiner Whittemore: It may be so amended.

Q. (By Mr. Peckham) Subsequent to that time, did you have a conference with Mr. Wm. R. Walsh, Regional Director for this district of the National Labor Relations Board, concerning the distribution of this notice? A. I did.

Q. Will you relate the substance of that conversation?

(Testimony of J. Stuart Neary.)

Mr. Jennings: Mr. Examiner, I would object to that upon the grounds previously urged; that is, there is nothing that anyone could do which would alter the question of whether there was or was not a violation of law; and on the further ground that anything that may have transpired in the course of the Board's investigation of this charge is entirely immaterial to the question of whether or not an unfair labor practice was committed.

The Witness: If I may again occupy the role of an attorney, rather than witness, I may state that I only have in mind offering the fact that in the discussion with Mr. Walsh the notice, as distributed, was criticized as to its form and as to the right of the company to distribute the notice. [42]

I make that as an offer of proof with respect to this answer.

Trial Examiner Whittemore: Let me ask you this: As I understood it, the notice that was posted, and which is now in issue, is the one which you approved after it had been submitted to you by Mr. Beaman?

The Witness: Yes.

Trial Examiner Whittemore: Is there another notice involved that was posted subsequently?

The Witness: It was not posted but was prepared for distribution.

Trial Examiner Whittemore: I don't see that that is at all material. That notice is not in issue. I am willing, upon that statement of yours, to per-

(Testimony of J. Stuart Neary.)

mit an offer of proof, but since it is not in issue here in any way, I see no reason for going into what may have preceded this discussion.

The Witness: I think it would shorten things if I do make an offer of proof on that.

Trial Examiner Whittemore: As I understand it, you didn't amend or change the notice which you originally published?

The Witness: That is correct.

I offer to show by my testimony that after discussions with Mr. Walsh in which the notice, Exhibit "B", was criticized as to form and substance and as to the right of the company to [43] distribute the notice, that I again counseled with Mr. Beaman and prepared a draft of another notice. Prior to that time, however, the Local Regional Director had refused to issue a complaint, as your records will show, on the original charge. That refusal was appealed by the union to the Board in Washington and in the interim between the refusal of the Local Regional Director to issue a complaint on the first charge, and the appeal which resulted in the issuance of the present complaint, and after a discussion with Mr. Walsh regarding the notice, we prepared for employees a new notice with respect to grievance procedure. We sent it to the printers and were preparing to recall the notice, which is Exhibit "B", which had previously been distributed, and substitute for it this new notice.

And I offer in evidence, as a part of my offer of

(Testimony of J. Stuart Neary.)

proof, this notice and if it is denied admission, I ask that it be——

Trial Examiner Whittemore: Included as a rejected exhibit?

Mr. Neary: Included as a rejected exhibit. This printed booklet entitled "Information to all employees. Grievance Procedure. North American Aviation, Incorporated. Inglewood, California, February 16, 1942," as amended by the inked changes on page 3 thereof.

After the preparation of this notice, I further offer to [44] prove, and the placing of it in the hands of the printer preparatory to distribution, we were informed by the National Labor Relations Board by the Director of the Twenty-First Region that the appeal of the union, regarding the refusal of the Regional Director to issue a complaint on the first charge in this matter, had been granted, and that the National Labor Relations Board had authorized the issuance of the complaint on this charge.

Subsequent to receiving that information, I requested the company, the respondent herein, to withhold the further printing and distribution of this amended notice.

Trial Examiner Whittemore: Now, there is a question on one point. You say "the further printing and distribution." It is my understanding that it was neither printed or distributed.

The Witness: There has been printing.

(Testimony of J. Stuart Neary.)

Trial Examiner Whittemore: But no distribution?

The Witness: No distribution. Further printing and subsequent distribution of the amended notice.

Trial Examiner Whittemore: May I ask then, before I rule on your offer, just what you contend is the materiality of something which, as yet, has not been done.

The Witness: One of the allegations of the complaint is the refusal of the company to bargain and negotiate with the union. We are accused in the complaint of unilaterally [45] and without the knowledge of the union of having prepared and distributed this notice, Exhibit "B". All of this evidence goes to that allegation.

The evidence that we develop will further show that this matter was taken up as a grievance by the union and discussed through the fourth step of the grievance procedure; that subsequent to that time the union did not avail itself of the provisions of our article 6, arbitration, but did come to the National Labor Relations Board with a charge, and that even after the Board's refusal to issue a complaint, the Regional Director's refusal to issue a complaint, the company did attempt to change the notice and was willing to make such changes in the notice as had been criticized by the union, and by the Regional Director, and was willing to make an amendment. All to show good faith on the part of the company and a desire to negotiate.

(Testimony of J. Stuart Neary.)

Trial Examiner Whittemore: May I ask at this point if you submitted your proposed corrections to the union?

The Witness: We did not.

Trial Examiner Whittemore: You went ahead and had it printed?

The Witness: We started the printing of it, yes.

Trial Examiner Whittemore: How do you consider that as being in furtherance of collective bargaining? I just question whether or not that fits into the picture. [46]

The Witness: Yes, it does. I consider that it does very much.

First, the unions have never requested us to change the form of the notice. They have attacked the right of the company to issue or distribute the notice. As a matter of fact, I think that in conferences they have attacked the right of the company to listen to individual grievances and apparently that is the position of the Board, but with respect to one of these issues, namely, whether or not we have negotiated, and whether or not we, by the terms or provisions of the notice, have intended or attempted to sabotage the union and degenerate its strength, by giving information to employees to the effect that might have the effect of creating in their minds that the union was not the collective bargaining agent of the employees so far as the grievances were concerned and that the company would handle

(Testimony of J. Stuart Neary.)

grievances alone, we attempted *to* good faith to amend the notice in those respects.

Trial Examiner Whittemore: Well, I would like to ask, then, as I understand it, the proposed changes have never been submitted to the union.

The Witness: That is correct.

Trial Examiner Whittemore: The union did not approve of any changes which you proposed?

The Witness: That is right. [47]

Trial Examiner Whittemore: Well, I will deny the offer to prove, permitting your offer to remain in the record.

If you wish to introduce that we will have it marked Respondent's Exhibit 1, and you may offer it.

The Witness: I do.

Trial Examiner Whittemore: Then I will reject it and it may be marked as a rejected exhibit in the rejected file.

The Witness: I offer this document, "Information to all employees; grievance procedure; North American Aviation, Inc., Inglewood, California; February 16, 1942," as Respondent's Exhibit 1, for identification. I am sorry that I haven't any other copies because that was the proof copy that came from the printer.

(Thereupon, the document referred to was marked as Respondent's Exhibit No. 1, for identification, and was rejected.)

(Testimony of J. Stuart Neary.)

RESPONDENT'S EXHIBIT No. 1
(Rejected)

February 16, 1942

INFORMATION TO ALL EMPLOYEES

Grievance Procedure

This bulletin supersedes the bulletin dated August 8, 1941, entitled, "Information For Employees —Grievance Procedure."

The agreement between North American Aviation, Inc., and United Automobile Workers of America, Aircraft Division, dated July 18, 1941, (copy of which you have received or will receive with this bulletin) sets forth in Article V and Article VI a procedure for presentation and adjustment of grievances by and through the representation of the union stewards and grievance committee. If employees desire this representation, you will follow the procedure outlined therein.

If employees desire to present grievances individually without representation, use the following procedure:

1. In the event of any dispute arising regarding the interpretation or application of any of the terms of the agreement, or any other request or grievance, there shall be no stoppage of work by any employee, and all such matters shall be adjusted according to the following procedure:

(Testimony of J. Stuart Neary.)

First: Between the employee presenting a grievance and his foreman;

Second: Between the employee presenting a grievance, if the matter is not satisfactorily settled with the foreman, and the factory manager or his authorized representative;

Third: Between the employee presenting a grievance, if the grievance is not satisfactorily settled by the factory manager, and the works manager or his authorized representative on that shift.

2. No case will be appealed from one of the above steps to the next higher step until after twenty-four (24) hours. In the event of the failure of the employee presenting a grievance to appeal any decision of a grievance, given at one step of the grievance procedure, within five working days of such decision, the case shall be considered closed on the basis of the decision so given.

There is no responsibility on the company to make an adjustment in any case unless presented within three days of its occurrence.

3. If any case is not satisfactorily adjusted by the employee presenting the grievance and the works manager or his authorized representative on that shift, it may be appealed to the general manager or his authorized representative within forty-eight hours. The general man-

(Testimony of J. Stuart Neary.)

ager or his representative will render his decision in writing to the employee presenting the grievance within forty-eight hours after the meeting if the decision was not given at the meeting.

4. Any of the periods within which any of the acts required in this notice are to be performed may be extended by mutual consent of the parties. In computing the time within which the acts herein are required to be performed, Saturdays, Sundays and holidays shall be excluded.

5. Minutes of the meeting between the employee presenting a grievance and management representatives will be kept, and copies of the minutes prepared by the management will be submitted to the employee presenting a grievance. After the minutes have been accepted by both parties, copies will be initialed by both parties for their permanent records.

6. The Company agrees that the employee presenting a grievance shall not be hindered, coerced, restrained or interfered with in the presentation and adjustment of such grievance or dispute, which presentation and adjustment shall be conducted on Company time.

It is understood that each employee has full time productive work to perform and that he will not leave his work during working hours, except when necessary, to present a grievance

(Testimony of J. Stuart Neary.)

under the procedure herein defined. If the employee presenting the grievance finds it necessary to make an investigation in order to properly present a grievance or dispute to the management he shall be granted, upon request, permission to leave his work for this purpose by his respective foreman or supervisor. He shall report to his foreman or supervisor the general nature of the grievance which he desires to investigate and again report to his foreman or supervisor upon his return to work in the department.

7. If any employee be discharged for any reason he shall be given the opportunity to present his grievance before leaving the plant.

8. In cases of disciplinary layoff or discharge of employees for infraction of shop rules or other misconduct which merits discipline, the employee shall have the right to seek modification or elimination of such penalty and compensation in whole or in part for lost wages on the ground that the employee was wrongfully disciplined or that the penalty was too severe for the offense involved, and such protest shall be handled according to the grievance procedure set forth herein, including the right of appeal to arbitration as provided hereinafter.

9. If a grievance or dispute is not satisfactorily settled and the employee requests that the

(Testimony of J. Stuart Neary.)

matter be submitted for settlement to arbitration, the Company agrees to submit the matter to arbitration, and it is understood and agreed that the decision of the arbitration board, as provided for hereinafter, shall be final and binding upon both parties.

10. The arbitration board shall consist of three persons: one chosen by the employee presenting the grievance; one chosen by the Company; and a third to be chosen by these two. No member of the board shall have any official, financial or other connection with or interest in either the Company or the employee presenting a grievance, or any associations with which he is affiliated. The Company and the employee presenting a grievance shall submit to each other the names of their respective representatives, and the two shall meet to choose the third member of said arbitration board within thirty-six hours after the request for arbitration has been made. If the Company and the employee representative cannot agree within seventy-two hours on a person to act as the third member of said board the Company and the employee representative shall request Dr. John R. Steelman, director of the Division of Conciliation of the Department of Labor, to submit a list of five persons qualified to act as the third member of said board. The employee representative and the company representative, after receipt of said list, shall each have the right to strike

(Testimony of J. Stuart Neary.)

two names from it in the following manner: the two representatives shall determine by lot the order of elimination and thereafter each shall in that order alternately eliminate one name until only one remains. The fifth or remaining name shall thereupon be accepted by both the employee presenting the grievance and the Company as the third member of said board. Said arbitration board shall thereafter meet as soon as possible to hear and adjust said grievance or dispute. Said board shall render its decision in writing not later than five days after it has taken the matter under submission.

11. The compensation and expenses of the third member of said board shall be borne equally by the Company and the employee presenting the grievance.

12. No grievance or dispute shall be presented for arbitration until the employee presenting the grievance has availed himself of the full procedure hereinbefore set forth, and all grievances or disputes shall be considered finally settled and not subject to arbitration unless within fifteen days from the date of receipt by the employee presenting the grievance or dispute of the decision of the general manager the employee presenting the grievance shall request in writing that the grievance or dispute be submitted to arbitration.

13. Before the submission of a grievance or

(Testimony of J. Stuart Neary.)

dispute for arbitration, the Company and the employee presenting the grievance shall set forth in writing specifically the issue or issues to be submitted to arbitration, and the arbitration board shall confine its decision to such stipulation of issue or issues.

14. It is understood that the arbitration board shall use every means to expeditiously present, consider and decide any and all matters submitted as herein provided, and the company and the employee presenting the grievance agree to facilitate the deliberations of said board in every way possible. Said board may call any employee as a witness in any proceeding before it, and the Company agrees to release said witness from work if he is on duty. If an employee witness is called by the Company, the Company will reimburse him for the time lost.

NORTH AMERICAN
AVIATION, INC.
J. H. KINDELBERGER
President

Dated February 16, 1942.

Mr. Kaplan: Do I understand you, Mr. Neary, to say that the proposed exhibit was never submitted to the union?

The Witness: That is correct.

Mr. Kaplan: That was a part of your offer of proof?

(Testimony of J. Stuart Neary.)

The Witness: Yes.

Trial Examiner Whittemore: It was in answer to a question that I put. I think the ruling upon that was given before your offer. As recall it, I asked you during that if you did offer it and let the record show that it has been offered [48] and rejected, and marked as designated.

The Witness: Any cross examination?

Cross Examination

Q. (By Mr. Jennings) Reserving my objection to this entire line of testimony, I would like to ask Mr. Neary whether or not before this notice was distributed to the employees there had been any discussion with the union, fixing the date more precisely, was there any discussion between July 18, 1941 and the date of the distribution of the notice about August 12, 1941 with any representative of the union with regard to distributing a notice which was distributed?

A. It is my understanding that there was not. However, Mr. Beaman would probably be better able to answer that question as to the company's position with respect to that. At that time the right of individual employees to present grievances individually had been negotiated between the parties and it was purely the administerial matter of notifying them of the procedure by which the management would receive and adjust those grievances. [49]

(Testimony of J. Stuart Neary.)

They didn't think that the union would have any interest, as a matter of fact, in the promulgation of the notice or the establishment of the procedure.

Q. Referring to another point, is it true that Section 10 of Article 5 of the contract, Board's Exhibit A, attached to the complaint, appearing on page 11, was a provision which was agreed upon by the parties after negotiations and as a compromise on different positions taken by the parties.

A. That is correct. If that isn't clear, I may state it this way: That in the negotiations the company took the position that the grievance procedure, as set forth in the contract, should provide clearly the procedure for individual employees bringing up grievances without union representation, as well as the procedure when employees desire the union representation; and we suggested that the wording show in all cases that it could be the individual employee or the district steward or the grievance committee, and the union did not desire that wording; as a matter of fact, the union objected to it.

The company representatives called to the attention of the union the fact that Section 9 (a) of the National Labor Relations Act required, or gave to the individual employees the right to present grievances. They admitted that they could not deprive them of that right. And I suggested, as a compromise, that the contract, especially Article 5, [50] contain provision for the presentation of grievances through union representatives and that that did

(Testimony of J. Stuart Neary.)

not deprive them of the right to individually present grievances. That language was accepted.

Q. It would be accurate to say that Section 10 was the culmination of a negotiation of the parties on that issue?

A. That is right, both parties agreeing that employees had the right under Section 9 (a) to present grievances, individually, without union representation.

Mr. Jennings: I should like to strike the last voluntary portion of the answer.

Mr. Peckham: It was in answer to his question, in direct answer, if the Examiner please.

Trial Examiner Whittemore: I will deny the motion to strike.

Mr. Jennings: To make the issue more precise, the article refers to the right to present grievances and there is nothing in the agreement, Exhibit A attached to the complaint, which confers on any employee the right to adjust or negotiate or bargain upon any grievance that he may present to the company.

Mr. Peckham: There is no contention that there was any bargaining by any individual employees here, or that this notice gave them any right to bargain. As I understand a grievance, Mr. Jennings, you don't bargain over a grievance. [51] If a man has a certain individual grievance you don't bargain. To bargain, in my estimation, seems to include something with reference to wages, hours, and

(Testimony of J. Stuart Neary.)

working conditions and grievances is an entirely different thing.

Trial Examiner Whittemore: I think that is a question which might better be included in the oral argument at the close.

Mr. Jennings: I simply wish to make clear my position.

Trial Examiner Whittemore: I think the language in the paragraph is very clear. I will permit him to give his interpretation. I shall permit other parties to give their interpretation of it as well.

Mr. Jennings: I should like at this time to renew my motion to strike any testimony relating to the negotiation of this clause of the contract upon the ground that the agreement speaks for itself; that oral evidence of any negotiation is entirely immaterial and inadmissible and in effect it is sought, by the oral evidence, to add to and alter and vary the terms and provisions of a written instrument between the parties, contrary, not only to the rules of evidence, but of the provisions of Article 12 of the contract itself.

The Witness: May I make a statement with respect to the motion to strike, and I will have to ask Mr. Jennings a question, if I may be permitted to do so in line with that. [52]

Is it your contention, Mr. Jennings, that you might agree that by the language of the contract the parties agreed that an individual employee could present a grievance, but that is all he could do?

Mr. Jennings: That is correct.

(Testimony of J. Stuart Neary.)

The Witness: He couldn't have it adjusted?

Mr. Jennings: No. The language of the contract says he can present the grievance, and the provisions of article 5 of the contract provide the manner in which it shall be adjusted. That is the answer, I think. No other procedure is necessary. He presents a grievance and it is settled and adjusted in a manner provided by the contract. I think that is very clear from the language of the contract itself.

Trial Examiner Whittemore: I will deny the motion to strike.

The Witness: Anything further?

Mr. Kaplan: I have no further questions.

(Witness excused.)

Mr. Neary: I think, Mr. Examiner, that if it is not inconvenient for yourself and the other parties that we could probably conclude within the next ten or fifteen minutes, if you would like to.

Trial Examiner Whittemore: That is agreeable to me.

Mr. Jennings: That would be fine.

Mr. Neary: Mr. Beaman, will you take the stand, please? [53]

MARSHALL E. BEAMAN,

called as a witness by and on behalf of the respondent, having been first duly sworn, was examined and testified as follows:

(Testimony of Marshall E. Beaman.)

Direct Examination

Q. (By Mr. Neary) State your full name, Mr. Beaman. A. Marshall E. Beaman.

Q. And your occupation?

A. I am director of industrial relations at North American Aviation.

Q. How long have you been so employed?

A. Since July 15, 1941.

Q. How was the notice, which is attached to the complaint as Exhibit B, given to the employees? By posting, or actual distribution?

A. It was distributed by the plant protection department, the plant policemen, to employees as they left work at the conclusion of their shift along with the copy of the contract, which is Exhibit A.

Q. And the new employees, subsequent to the first distribution, how was it given to them?

A. They are given a copy of the contract and a copy of the notice at the time of hire by the employment department personnel.

Mr. Jennings: Before you pass on, is a copy of the [54] contract or a copy of this notice posted on any bulletin board in the plant?

The Witness: I don't believe I can answer that. I am not sure. I know our main thought was to distribute it and I know we did distribute it and I don't think we posted it, but I can't make a definite statement to that effect. It was not ordered posted by the industrial relations department nor by Mr. Kindelberger.

(Testimony of Marshall E. Beaman.)

Q. (By Mr. Neary) Did you have any discussion with any representatives of the union between July 18, 1941 and August 12th, the date upon which this notice was distributed, with respect to, first, the distribution of the notice or, secondly, its form? A. No, I did not.

Q. Did you have any discussions with any representatives of the union subsequent to that time; that is, the date of distribution, with respect to the form of the notice or its distribution?

A. Yes.

Q. When did the first of those occur, approximately?

A. I would judge within two or three weeks following the distribution of the notice, it was discussed by the negotiating committee of the union and myself at a meeting, which had been called for another purpose, called to discuss grievances, which was shortly after the distribution. The exact date I [55] don't recall. However, it is a matter of record.

Q. At that time, in substance, what was the position of the union representatives?

A. The union representatives took the position that by the distribution of this notice we were attempting to inform the employees that that was the only grievance procedure and claiming that we were attempting to undermine the union, and things of a general nature of that kind.

Q. At that time had your grievance procedure been completely set up?

(Testimony of Marshall E. Beaman.)

A. At that time the grievance procedure, which is provided for in the contract, was only partly in operation due to the fact that we had not districted the plant and had not received an official list of stewards from the union and so on. Step two, as we speak of in the grievance procedure, the grievance procedure used when the union represents the employe; step two, which provides for the district steward and the factory manager or his representative to have a meeting on a grievance was inoperative.

Q. So you were meeting at that time with the grievance committee or negotiating committee of the union? A. Weekly, right.

Q. Following a procedure which had been in operation prior to the execution of the contract?

A. Right. [56]

Q. That procedure was subsequently changed, was it not?

A. It was changed when we negotiated districting of the plant and the union assigned stewards to the various districts, which was some time in September.

Q. I show you herewith a letter dated August 19, 1941 addressed to Mr. J. H. Kindelberger and signed by Mr. Paul Lindsay on the letterhead of Aviation Division UAW-CIO; and ask you if you have ever seen that? A. Yes, I have.

Q. Was that sent directly to you, or how did you receive it?

(Testimony of Marshall E. Beaman.)

A. Mr. Kindelberger referred the matter to me. In fact, I think I answered this letter. [57]

Mr. Neary: I ask that this be introduced as Respondent's Exhibit next in order.

Trial Examiner Whittemore: It may be marked as Respondent's No. 2 for identification and submitted to Mr. Jennings.

(Whereupon, the document referred to was marked as Respondent's Exhibit No. 2, for identification.)

Mr. Jennings: I object to the letter, Mr. Examiner, upon the ground that, as has been argued somewhat at length previously, any steps taken between the parties themselves to reach a determination as to the legality of the company's issuance of this notice, would be entirely immaterial because only the Board has the right and the power to determine whether this is an unfair labor practice.

Trial Examiner Whittemore: May I see the letter, please?

Mr. Jennings: I should like to add further, that, assuming, as I believe the Board has discretion in a case such as this to say that the party should exhaust the procedure provided by this contract, or to say that they should exhaust their procedure provided by their contract, as the Board's discretion might be exercised; that under the circumstances and facts of this case that discretion of the Board should certainly not be exercised to require the parties to submit to a private tribunal the question

(Testimony of Marshall E. Beaman.)

of violation of the National Labor Relations Act, such as the present one, which is not merely a question of fact but [58] a question of law which is entirely novel to my knowledge.

Trial Examiner Whittemore: Wouldn't you agree, Mr. Jennings, that this document is somewhat different than the material contained in the offer of proof with respect to any conference that Mr. Neary may have had with Mr. Walsh when the union was not present; that whether or not you feel that this has any bearing on the ultimate determination of the issue, that nevertheless if the respondent feels that any subsequent negotiations, which it had with the union on the point which is at issue, may or may not be relevant as to its determination, don't you feel this is in a somewhat different class than the conference which respondent may have had with the Board after the charge had been filed.

Mr. Jennings: Possibly in a different class, but I think it is still irrelevant to any issue in this proceeding.

Mr. Neary: One of the issues is the question of our refusal to negotiate, and this goes directly to the refusal to negotiate even assuming, which I do not admit, for the purpose of argument that the company's interpretation of its duty under the terms of the contract was wrong by its failure to negotiate prior to the distribution of the notice, yet, nevertheless, subsequent to that time when the matter came to the attention of the union and when

(Testimony of Marshall E. Beaman.)

the union raised the point under the provisions of Article 5, the company acceded to negotiation and did negotiate with the union [59] subsequent to that time.

Trial Examiner Whittemore: Well, might I not make this suggestion to save time? I don't think there is any necessity for going into all of the steps which may have followed the bringing of this matter to your attention by the union grievance committee.

Mr. Neary: No.

Trial Examiner Whittemore: I think it has already been stipulated, it seems to me that the notice as originally distributed remains the same and is still being distributed.

Mr. Neary: That is right.

Trial Examiner Whittemore: So that whatever may have come out of those negotiations, there has been no change in the document which the union first claimed was an unfair labor practice in the distribution of it, at least, and still maintains that it is. Now, wouldn't it be possible just to stipulate that here were on certain days certain conferences at which this particular point was discussed, simply, as background. It didn't result, it seems to me, in any change in the document, which is at issue here.

Mr. Neary: All that I intended to show by this letter was that the union did submit this dispute under the terms of Article 5 to the grievance procedure. The next letter I introduce is the com-

(Testimony of Marshall E. Beaman.)

pany's letter in answer to that. The next question I had to ask was: Did the union ever request [60] that this matter be submitted to arbitration according to Article 6 of the contract, and the answer will be "no," then I am through.

Trial Examiner Whittemore: In view of that, I am going to admit this in evidence over your objection as Respondent's Exhibit 2.

(Thereupon, the document heretofore marked for identification as Respondent's Exhibit No. 2, was received in evidence.)

RESPONDENT'S EXHIBIT No. 2

UAW
AVIATION DIVISION
CIO
402 Fox Wilshire Theatre Bldg.,
202 South Hamilton Drive
Beverly Hills
California

Telephone
Webster 8103

August 19, 1941

Mr. J. H. Kindelberger
Pres. North American Aviation, Inc.
Imperial and Redondo Blvds.
Inglewood, California

Dear Sir:

On Monday, August 18, 1941, the question of the leaflet put out by the North American Aviation,

(Testimony of Marshall E. Beaman.)

Inc., titled "Information for Employees, Grievance Procedure", over your signature, was taken up by the Union Grievance Committee with Mr. Beeman and Mr. Thayer; no satisfactory adjustment was reached.

Under Article 5, Paragraph 3 of the United Automobile Workers contract with North American Aviation, Inc., we are appealing the decision of the plant labor relations committee and request a meeting with you at your earliest possible convenience to discuss this question.

Yours truly,

(Sgd) PAUL LINDSAY
Chairman Grievance
Committee—Rec.
Sec. of Local 887

PL:dp

Q. (By Mr. Neary) I show you here what purports to be a copy of a letter dated August 22, 1941, addressed to Paul Lindsey, Chairman of the Grievance Committee of the U.A.W.-C.I.O., and signed by J. H. Kindelberger by yourself as authorized representative, and ask you if you wrote that letter.

A. I did.

Q. Is that a true and correct copy of the original? A. Yes.

Q. Was the original sent to Mr. Lindsey?

A. Yes.

(Testimony of Marshall E. Beaman.)

Q. At the address shown on the letter?

A. Yes.

Q. And is that in answer to the letter which we have just introduced as Respondent's Exhibit 2?

A. It is. [61]

Mr. Neary: I offer this as Respondent's next in order.

Trial Examiner Whittemore: Would you show it to counsel?

Mr. Jennings: The same objection, Mr. Examiner.

Trial Examiner Whittemore: Well, to whom is that dirceted?

Mr. Neary: Mr. Lindsey.

Trial Examiner Whittemore: Let's first find out whether it was received. That may make some difference as to whether or not it is admitted.

Mr. Jennings: It may be stipulated that the original was received by the union.

Mr. Neary: So stipulated.

Trial Examiner Whittemore: Then your objection is simply to its being irrelevant?

Mr. Jennings: That is correct; not to the lack of foundation.

Trial Examiner Whittemore: The objection is overruled and it is received as Respondent's Exhibit 3.

(Thereupon, the document above referred to was marked as Respondent's Exhibit No. 3, and was received in evidence.)

(Testimony of Marshall E. Beaman.)

RESPONDENT'S EXHIBIT No. 3

August 22, 1941

Paul Lindsay
Chairman, Grievance Committee
Recording *Section* of Local 887
Aviation Division UAW-CIO
402 Fox Wilshire Theatre Building
202 South Hamilton Drive
Beverly Hills, California

Dear Mr. Lindsay:

Replying to your letter dated August 19 concerning an appeal of the decision on your complaint of the distribution of the leaflet put out by North American Aviation, Inc., entitled "Information for Employees, Grievance Procedure," please be advised that Section 3, Article 5 of the N.A.A.-UAWA Contract provides that any case not satisfactorily adjusted by the plant grievance committee on the shift on which the grievance arose with the Management's representative on that shift may be appealed to the General Manager or his authorized representative and the grievance committee.

The particular case in question has been through the 4th step of the grievance procedure, and your meeting with Mr. Beaman and Mr. Thayer was the meeting provided for in this section.

As you undoubtedly remember, this was not a meeting provided for in Step 3 between the shift grievance committee and the Works Manager.

(Testimony of Marshall E. Beaman.)

Your committee consisted of Mr. A. Simpson, Mr. C. Quintard, Mr. J. Dye, and Mr. P. Lindsay, from the day shift, Mr. J. Hoffman and Mr. E. Dennington, from the night shift, and Mr. R. Althof, International Representative.

The decision given by the Management's representative at this meeting is the decision of Management. The distribution of the leaflet referred to was in no way contrary to the N.A.A.-UAWA Agreement dated July 1 and signed July 18, 1941.

Very truly yours,
NORTH AMERICAN
AVIATION, INC.
J. H. KINDELBERGER
President
By W. E. BEAMAN
Authorized Representative

Q. (By Mr. Neary) Did the union representatives, subsequent to August 22, 1941, ever request that the dispute with reference to the distribution of notice, which is Exhibit "B" attached to the complaint, be submitted to arbitration? [62]

A. No, they didn't.

Mr. Jennings: Same objection.

Trial Examiner Whittemore: Objection overruled.

Mr. Neary: I have no further questions.

Trial Examiner Whittemore: You don't have copies?

(Testimony of Marshall E. Beaman.)

Mr. Neary: No, I don't. I would like the privilege of submitting copies and withdrawing the originals. I can have that done this afternoon if the reporter would permit Mr. Peckham to take the copies and I will furnish sufficient copies for the other parties.

Mr. Jennings: We should have two copies of them in evidence. If you are able to find another copy of the rejected exhibit, I think that would be appreciated also.

Mr. Neary: We shall make an effort to do that.

Trial Examiner Whittemore: Very well.

Mr. Neary: Mr. Examiner, I don't think that anything will be gained by going over with Mr. Beaman the portion of my offer of proof. It is in there as an offer of proof both for the testimony of Mr. Beaman and myself.

Trial Examiner Whittemore: No; I understood that your offer was to include both such testimony as you might bring out and that Mr. Beaman might bring out.

Mr. Neary: And Mr. Peckham promised too that he would clear up that hiatus between the execution of the contract and the distribution of the notice; is that sufficiently clear [63] in your mind now?

Trial Examiner Whittemore: I think that is clear.

Mr. Neary: No further questions.

Trial Examiner Whittemore: All right. Mr. Jennings?

(Testimony of Marshall E. Beaman.)

Cross Examination

Q. (By Mr. Jennings) Do I understand you to say, Mr. Beaman, that the notice was distributed on August 12th before the grievance procedure, provided by the contract, had been completely set up?

Mr. Neary: May I have that question, please?

Trial Examiner Whittemore: Will you read the question?

(The question was read.)

The Witness: The grievance procedure, as provided in the contract, was not in operation as called for in the contract at that time due to the fact that we had not districted the plant and we had not received the official list of district stewards.

Mr. Neary: But there was a grievance procedure, was there not?

The Witness: Yes; there was a grievance procedure. It was complete except for step two as provided in the contract.

Mr. Neary: If I may make a statement that might clarify that, Mr. Jennings. We had a grievance procedure which was in operation prior to the execution of the contract which [64] provided, I believe, for weekly meetings, did it not, between the grievance committee and company representatives?

Mr. Lindsay: Yes.

Mr. Neary: Under the provisions of the contract district stewards were to be appointed by the

(Testimony of Marshall E. Beaman.)

union to represent certain geographical districts of the plant, and at the time that Mr. Beaman is speaking of that physical work had not been done; that is, the plant had not been divided into districts of so many employees to a district, nor had the union set up or nominated their stewards for each district; and for that reason step 2, as set forth in contract "B", Article 5, 1 (b) was not in operation, but a grievance procedure which both parties followed was in operation.

Q. (By Mr. Jennings) Did the company ever inform its employees that the procedure, as set forth in the notice, Exhibit "B", attached to the complaint. was not a substitute for the grievance procedure set forth in the contract, Exhibit "A", attached to the complaint.

A. There was no notification made except what was included in that notice.

Q. I assume that the company intended that their employees desiring to do so should use the grievance procedure set forth in the notice?

A. They felt that that was an individual matter for the employee to decide. [65]

Q. If he wished to do so, of course, you expected that he would use that procedure?

A. Why, if he wanted to handle his grievance individually, yes.

Q. Were any grievances excluded from those which could be handled in the manner set forth in the notice?

(Testimony of Marshall E. Beaman.)

A. Will you read the question, please.

(The question was read.)

The Witness: I don't quite understand what you mean.

Q. (By Mr. Jennings) Would any grievance of any sort or character whatsoever be handled under the procedure provided in the notice, Exhibit "B" attached to the complaint, assuming that the employee wanted to handle it in that fashion.

A. I think I would answer that this way: if an individual employee came to us with what he thought was a grievance, we would attempt to settle the thing. Many times, of course, we are approached with questions which they think are grievances, which are actually not grievances. We have that same question with the union. We might even discuss, in order to clarify in the individual employees mind the situation, things which are not grievances in the strict sense of the word.

Q. The point I am trying to make is this: were employees told that certain things could not be taken up under this procedure provided for by the notice?

A. No, they were not. They were only told what is in that notice. That is the only thing we have told them. [66]

Q. Then the answer would be, so far as you were concerned there was no limitation upon the nature of that type of grievance that might be

(Testimony of Marshall E. Beaman.)

taken up under either the procedure provided in the notice or in the procedure provided in the union contract?

A. There would be no limitation on discussing with the employee what he might want to discuss but, obviously, there would be limitations on what we might arrive at.

Mr. Jennings: That is all.

Q. (By Mr. Kaplan) I would like to ask two questions. All during those negotiations, Mr. Beaman, the company always took the position that it had the right to distribute Exhibit B, did it not?

A. That is right. We felt that right was given to us by section 10 of Article 5.

Q. Isn't it a fact, Mr. Beaman, that at some time during these meetings with the union's grievance committee, that you stated that the disposition of the company would not be changed because of the fact that the union had already filed a charge with the Labor Board?

A. At a meeting in January in Commissioner Malcom's office, Commissioner Malcom is connected with the United States Conciliation Service, this matter was discussed. At this meeting with representatives of the union and the company and Commissioner Malcom—— [67]

Q. Not to interrupt you, Mr. Beaman, but I asked you during your meeting with the grievance committee at the plant.

A. You didn't say "at the plant." No, I don't

(Testimony of Marshall E. Beaman.)

remember of saying that we wouldn't discuss it because it had been brought before the National Labor Relations Board at the plant. We have stated repeatedly, of course, that we thought that we had taken the correct stand. At this meeting in Malcom's office, which I was referring to, we did make the statement that a complaint had been filed with the National Labor Relations Board and we felt that wasn't the place to settle it or even discuss it.

Mr. Kaplan: That is all.

Q. (By Mr. Jennings) I didn't understand the last part of your answer. You say that wasn't the place to discuss it?

A. At Commissioner Malcom's office. We didn't feel it was a point in issue there. That wasn't why the meeting was called. The matter was brought up at which time it was pending before the National Labor Relations Board.

Q. (By Mr. Kaplan) That meeting at the Conciliation Service was brought about with respect to all of the various grievances that accumulated between the union and the company, and an attempt was made to dispose of all of those grievances at that time; isn't that so?

Mr. Neary: I object to that. [68]

The Witness: We did not——

Mr. Neary (Continuing): ——on the ground that it is leading and suggestive.

Mr. Kaplan: He is your witness.

(Testimony of Marshall E. Beaman.)

Mr. Neary: And improper cross examination to this extent: that Mr. Kaplan knows, he was present at the meeting, and I know that it was definitely understood that this was not a grievance hearing before Mr. Malcom. It was a meeting to attempt to see if the parties could not get together on certain interpretations of the contract, as Mr. Malcom expressed it to me. It was not in any sense of the word to be considered as a grievance hearing.

Mr. Kaplan: I have to disagree with Mr. Neary's version of that particular hearing because we went very specifically into a number of other grievances that were confronting the management and the union.

Trial Examiner Whittemore: I don't know that it is important what title the meeting was brought about. I will overrule your objection; so far as being leading, it is cross examination. However, this witness may interpret what he felt the meeting was and if you feel it was different, you can come back to the stand and testify, and Mr. Kaplan, who was present, can also give his interpretation. At the present time I don't see that it is particularly important.

Mr. Kaplan: I have no further questions of Mr. Beaman, [69] or is there a question pending?

Trial Examiner Whittemore: I don't know if the witness has answered.

Mr. Jennings: He hadn't answered.

(Testimony of Marshall E. Beaman.)

The Witness: I don't know what the question was now.

Trial Examiner Whittemore: Do you want to restate it?

Mr. Kaplan: I would rather have it re-read.

(The question referred to was read as follows:

"That meeting at the Conciliation Service was brought about with respect to all of the various grievances that accumulated between the union and the company, and an attempt was made to dispose of all of those grievances at that time; isn't that so?")

The Witness: No.

Mr. Jennings: I haven't objected to this, Mr. Examiner, but in my view of the case the testimony offered by the union is equally irrelevant to the testimony offered by the company on the same topic; that is the effort of the parties to reach a private agreement on whether or not there was a violation of law.

Mr. Kaplan: We have no further questions.

Trial Examiner Whittemore: All right. Have you any further questions, Mr. Jennings?

Mr. Jennings: No. [70]

Redirect Examination

Q. (By Mr. Neary) I think we may have one or two questions here which I didn't ask before. This meeting you refer to was a meeting called by

(Testimony of Marshall E. Beaman.)

Commissioner Malcom of the United States Conciliation Service, connected with the Department of Labor; is that correct? A. Yes.

Q. And you were present and representing the company; is that correct?

A. That is correct.

Q. Did you ask Mr. Malcom whether this was to be a grievance meeting? A. I did.

Q. What did you say to Mr. Malcom?

A. I said in the first place——

Mr. Kaplan: We object to that because there was no representative of the union there. It is purely hearsay so far as the union is concerned.

Q. (By Mr. Neary) Who was present at that meeting besides yourself and Mr. Malcom?

Mr. Kaplan: Go ahead.

The Witness: Mr. Kaplan, Mr. Lindsay, Mr. Postma.

Q. (By Mr. Neary) This conversation took place when all of us were present?

A. That is right. [71]

Q. State what the conversation was.

A. I will have to give a little background for it.

In the first place, Mr. Malcom called me and later confirmed it by letter that he had been requested by the union to get together with us, representatives of the company, to discuss certain matters relative to the contract. When the meeting was first called together in Mr. Malcom's office, one of the first requests I made in questions I asked was

(Testimony of Marshall E. Beaman.)

whether or not this was a meeting to supersede the grievance procedure as contained in the contract. Mr. Malcom stated very definitely that it was not and that he did not care to discuss any individual grievances which had not been handled through the grievance procedure. We did discuss many issues and Mr. Malcom refused to discuss any individual grievances which the union had there which had not been put through the grievance procedure.

Mr. Neary: That is all.

Trial Examiner Whittemore: Any further questions?

Mr. Kaplan: No questions.

Q. (By Trial Examiner Whittemore) I have just one or two questions here: Did the company ever distribute the copies of the contract to all of the employees?

A. Yes; they distributed those at the same time they distributed the notice, the same day, the same time.

Q. Were they likewise given to each new employee? [72] A. Right.

Q. Prior to the issuance of this notice as to the individual treatment of the grievance procedure, within your knowledge as to their past record, at least, do you know if the company has ever distributed a similar notice?

A. Not to my knowledge.

Q. To its employees?

A. Not to my knowledge.

(Testimony of Marshall E. Beaman.)

Trial Examiner Whittemore: I think that is all.

Mr. Kaplan: Just one question, Mr. Examiner. Did the company post any copies of the agreement on any of the bulletin boards?

The Witness: I can't say. To my knowledge neither the agreement nor the notice was posted on company bulletin boards. It was given to everybody.

Mr. Jennings: Every employee was given a copy?

The Witness: Every employee was given a copy of each.

Mr. Kaplan: That is all so far as Mr. Beaman is concerned.

Trial Examiner Whittemore: Is that all?

Q. (By Mr. Neary) Just one question: Have you any record, Mr. Beaman, of the number of grievances, if any, that have been handled under the procedure of this notice, Exhibit B?

Mr. Jennings: That is objected to as immaterial.

The Witness: I can't say how many offhand—— [73]

Trial Examiner Whittemore: Just a moment. Wait until I rule on the objection. I assume that this is simply a preliminary question, so far it is simply whether or not there is any record.

Mr. Neary: That is right.

Trial Examiner Whittemore: Of such handling.

Mr. Neary: That is right.

(Testimony of Marshall E. Beaman.)

Trial Examiner Whittemore: I assume you will follow that up with how many there are.

Mr. Neary: That is correct.

Trial Examiner Whittemore: So I would like to know what relevancy that has.

Mr. Neary: It probably hasn't a great deal. I don't know whether I am correct or not but it is my understanding that very few grievances have been handled in this manner and quite a number through the manner set forth in the contract. And it would go to answer the question as to whether or not there was any misunderstanding on the part of the employees that this procedure superseded the procedure set forth in the contract or was considered more desirable by the company, as has been contended by the Board and by the union in their discussion.

Trial Examiner Whittemore: I don't think the number is at all relevant. It would have to be relative anyway, then we would go into a statistical question here which might [74] change this afternoon and might change tomorrow morning. I think that if you are willing to withdraw that question, I would permit a question as to whether or not there have been grievances taken up in the manner outlined in this notice, and simply let it go at that.

Would you have any objection to that fact being in the record, if it is a fact?

Mr. Jennings: I will object to that as being immaterial.

(Testimony of Marshall E. Beaman.)

Mr. Neary: I don't think that that is sufficient so I would object to asking that question.

Trial Examiner Whittemore: Well, you would have to establish first that there had been taken up some cases before you can establish how many, it seems to me.

Mr. Neary: But the condition of your request is that we let it go at that and if that is the condition, I will object to it.

Mr. Jennings: This is more or less my idea: Supposing that we go so far as to say this was an unfair labor practice and designed to undermine and so on and so forth. If it was and it was unsuccessful, I don't suppose that alters the nature of the offense or the extent of it.

Trial Examiner Whittemore: I think what I would suggest we do in this case, I don't see the relevancy of any number; we might have to go into a long exploration here in order to determine whether or not there was any basis for your [75] statement that there was comparatively few. So that if you want to make an offer of proof, why, I suggest that can be the best way of handling it.

Mr. Neary: Might I speak with Mr. Beaman in private for a moment?

Trial Examiner Whittemore: Yes.

(Conference between counsel and witness.)

Mr. Neary: If the objection is sustained, I make an offer of proof, and let the record show that two grievances have been handled according to the pro-

(Testimony of Marshall E. Beaman.)

cedure set forth in the notice, Exhibit B, and over 800 presented and adjusted according to the procedure set forth in articles 5 and 6 of the contract.

The respondent rests.

Trial Examiner Whittemore: Very well. Do you wish to be heard on his offer of proof?

Mr. Jennings: Well, of course, the objection was sustained to the question. He made the offer of proof and, of course, I would still object to the receipt of the evidence.

Trial Examiner Whittemore: I don't know but what the relativity of the member would cause you to change your mind, but it appears it doesn't. I will deny the offer of proof and it may remain in the record. You have no further questions?

Mr. Neary: The respondent rests.

Q. (By Trial Examiner Whittemore) I would like to simply [76] ask the witness again, or rather ask him the question which I suggested you substitute for the one you did put: This procedure outlined in this notice, which is in question, has been in operation, has it not?

A. That is right.

Q. And it has not been withdrawn and is still being distributed to new employees?

A. That is correct.

Trial Examiner Whittemore: Have you any further questions, Mr. Kaplan?

Mr. Kaplan: No further questions.

Mr. Neary: The respondent rests.

(Testimony of Marshall E. Beaman.)

Trial Examiner Whittemore: Then you are excused.

(Witness excused.)

Trial Examiner Whittemore: Have you any witnesses, Mr. Kaplan?

Mr. Kaplan: Yes. Well, Mr. Examiner, we have one witness to testify on just one small matter. I think it is a question that will take about two minutes.

Trial Examiner Whittemore: Do you want to put him on?

Mr. Kaplan: Yes.

Mr. Neary: Do you want to offer a stipulation on it?

Trial Examiner Whittemore: Off the record for a moment.

(Discussion off the record.) [77]

PAUL LINDSAY,

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Jennings) What is your full name, please?

A. Paul Lindsay.

Q. Where are you employed?

A. North American Aviation.

(Testimony of Paul Lindsay.)

Q. How long have you been employed there?

A. Approximately three years.

Q. Do you hold any office in the union?

A. President of the local.

Q. Have you been working in the present plant since August the 12th of 1941? A. I have.

Q. How much of the time since August 12th have you been working in the plant, or on union business? A. The entire time.

Q. Are there bulletin boards in the company plant at Inglewood? A. There are.

Q. And are there union bulletin boards or company bulletin boards? A. There are both. [78]

Q. Have you noticed or seen copies of the grievance procedure or notice to employees, Board's Exhibit A, attached to the complaint, or B attached to the complaint, posted on the company's bulletin boards?

A. I have seen this on several boards in various departments.

Q. Have you seen posted with the notice, copies of the contract between the union and the company, Board's Exhibit A attached to the complaint?

A. No.

Mr. Neary: Will you read that question?

(The question was read.)

Mr. Neary: I don't know what difference it makes whether they were posted together or not. Go ahead.

Mr. Jennings: That is all.

(Testimony of Paul Lindsay.)

Cross Examination

Q. (By Mr. Neary) What bulletin boards did you see this posted on, Mr. Lindsay?

A. Well, as I recall on one place in 36.

Q. Department 36?

A. What would be department 36, and in my own department, department 1.

Q. Where are those bulletin boards located?

A. Well, they have been changed from time to time.

Q. I am talking about the bulletin board on which you saw [79] this notice posted. Where was it when you saw the notice posted? Describe its location. A. Well, always near the clock.

Q. The time clock? A. The time clock.

Q. The time clock in department 36?

A. The one in 36 more probably on the——

Q. I don't want to know where it probably was; I want to know where it was you saw it.

A. Well, they have changed the location around there several times but at the time it was on——

Q. I just want your best recollection.

A. The best recollection I have, it was on the side of the tool crib or the tool control crib. [80]

Q. In Department 36?

A. As I remember it.

Q. Where was the one in 1?

A. Near the time clock.

Q. When did you see the notices on these bulletin boards?

(Testimony of Paul Lindsay.)

A. Well, I would say along the latter part of August or the first of September. I couldn't tell you just when.

Q. Have you seen them continuously since that time?

A. No. The Boards are covered up from time to time with other notices.

Q. How long was the one posted in Department 36? A. That I couldn't say.

Q. How long was it posted in 1?

A. I couldn't tell you.

Q. That was the only posting you ever saw; is that right?

A. The only definite ones I recall.

Q. You don't know whether that was posted by the company or not or any of the representatives?

A. Well, I have reason to believe that if it hadn't been it would have been removed by the officers who watch those things very close down there.

Q. You didn't see it after a time, did you?

A. After quite a time, yes.

Q. How long a time?

A. Well, I couldn't say definitely how long but it was the [81] usual thing. You go there and they get to be a habit. I don't know when it was taken off.

Q. But you couldn't say of your own knowledge that this bulletin was posted by the company or any of its representatives?

(Testimony of Paul Lindsay.)

A. As I stated before, I have reason to believe that it was because of any notice——

Q. Of your own knowledge. Will you listen to the question? A. I heard your question.

Q. Did you see any representative of the company post this bulletin? A. I did not.

Q. Did any representative of the company tell you he posted it or another representative of the company posted it? A. No.

Mr. Neary: That is all.

Q. (By Mr. Kaplan) I would like to ask one question: Did you ever have any copies of Exhibit "B" in your possession?

A. I was handed one, I believe, the first trip I made into the plant after I came back from leave of absence.

Mr. Kaplan: That is all.

Trial Examiner Whittemore: Were you given a copy of the contract at the same time?

The Witness: Yes; I was.

Mr. Kaplan: I believe that is all. [82]

Trial Examiner Whittemore: You are excused.

(Witness excused.)

Trial Examiner Whittemore: Do you have any other witnesses, Mr. Kaplan?

Mr. Kaplan: No.

Trial Examiner Whittemore: Any questions in rebuttal, Mr. Jennings?

Mr. Jennings: I think not, Mr. Examiner.

Trial Examiner Whittemore: Suppose we take

a two or three minute recess and then return, or would Mr. Jennings desire to state first what his position is.

Mr. Jennings: Yes.

Trial Examiner Whittemore: Very well. Then before we bring the hearing to a close, I should like to hear from each counsel, as I suggested I would do at the opening of the hearing, as to his respective position to the issues, and what has been proved. [83]

In the United States Circuit Court of Appeals
for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

NORTH AMERICAN AVIATION, INC.,
Respondent.

CERTIFICATE OF THE NATIONAL LABOR RELATIONS BOARD

The National Labor Relations Board, by its Executive Secretary, duly authorized by Section 1 of Article VI, Rules and Regulations of the National Labor Relations Board—Series 2, as amended, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record in a proceeding had before said Board en-

titled, "In the Matter of North American Aviation, Inc., and United Automobile, Aircraft and Agricultural Implement Workers of America, Local 887, C.I.O.," the same being Case No. C-2198, before said Board, such transcript including the pleadings, testimony and evidence upon which the order of the Board in said proceeding was entered, and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

(1) First amended charge filed by United Automobile, Aircraft and Agricultural Implement Workers of America, Local 887, C.I.O., sworn to April 11, 1942, together with respondent's information for employees on grievance procedure.

(2) Complaint, together with exhibits A and B, and notice of hearing issued by the National Labor Relations Board, April 15, 1942.

(3) Respondent's answer to complaint.

(4) Certified copy of order designating Charles W. Whittemore, Trial Examiner for the National Labor *Relations, dated* April 23, 1942.

Documents listed hereinabove under items 1-4, inclusive, are contained in the exhibits and included under the following item:

(5) Stenographic transcript of testimony before Trial Examiner Whittemore on April 27, 1942, together with all exhibits introduced into evidence.

(6) Copy of Intermediate Report of Trial Examiner Whittemore, dated May 20, 1942.

(7) Copy of order transferring case to the Board, dated May 22, 1942.

(8) Copy of respondent's telegram, dated June 10, 1942, requesting oral argument.

(9) Copy of respondent's telegram, dated June 17, 1942, requesting extension of time to file brief.

(10) Copy of telegram, dated June 18, 1942, granting all parties extension of time to file exceptions and brief.

(11) Copy of respondent's exceptions to the Intermediate Report.

(12) Copy of union's telegram, dated June 26, 1942, requesting oral argument.

(13) Copy of notice of hearing for purpose of oral agrument, dated June 30, 1942.

(14) Copy of list of appearances at oral argument held before the Board, July 14, 1942.

(15) Copy of decision, findings of fact, conclusions of law and order issued by the National Labor Relations Board September 29, 1942, together with affidavit of service and United States Post Office return receipts thereof.

In Testimony Whereof the Executive Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set her hand and affixed the seal of the National Labor Relations Board in the city of Washington, District of Columbia, this 16th day of November, 1942.

[Seal] BEATRICE M. STERN,
Executive Secretary,
National Labor Relations
Board.

[Endorsed]: No. 10313. United States Circuit Court of Appeals for the Ninth Circuit. National Labor Relations Board, Petitioner, vs. North American Aviation, Inc., Respondent. Transcript of Record. Upon Petition for Enforcement of an Order of the National Labor Relations Board.

Filed November 23, 1942.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

[Title of Circuit Court of Appeals and Cause.]

STATEMENT OF POINTS UPON WHICH PETITIONER INTENDS TO RELY

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Ninth Circuit:

Comes now the National Labor Relations Board, petitioner in the above proceeding, and in conformity with the revised rules of this Court heretofore adopted, hereby states the following points as those upon which it intends to rely in this proceeding:

1. Upon the undisputed facts respondent has engaged and is engaging in unfair labor practices within the meaning of Section 8 (1) and (5) of the National Labor Relations Act.

2. The Board's order is wholly valid and proper under the Act.

Dated at Washington, D. C., this 17th day of November, 1942.

NATIONAL LABOR RELATIONS BOARD
By ERNEST A. GROSS,
Associate General Counsel.

[Endorsed]: Filed Nov. 24, 1942.

[Title of Circuit Court of Appeals and Cause.]

STATEMENT OF POINTS UPON WHICH RESPONDENT INTENDS TO RELY

To the Honorable Chief Justice and Associate Justices of the United States Circuit Court of Appeals for the Ninth Circuit:

Comes now the Respondent, North American Aviation, Inc., and in conformity with the rules of this court hereby states the following points as those upon which it intends to rely in this proceeding:

1. The order of the Board is improper, void and in excess of the jurisdiction of the Board.

2. There was no proof before the Board that any act complained of constituted an unfair labor practice on the part of Respondent or interfered with or restrained or had a tendency to interfere with or restrain, commerce.

3. The decision of the Board is based upon assumed issues and charges which are entirely beyond the allegations of the complaint and without basis in the evidence.

4. The decision is in conflict with the proviso of Section 9(a) of the National Labor Relations Act granting to individual employees or minority elements the right of individual presentation of grievances. The right of presentation of grievances implies the right to obtain adjustment thereof, even by arbitration when necessary.

5. The decision is in violation of the provisions of the contract between Respondent and the Union providing for individual grievance presentation and also providing for settlement by arbitration of any grievance or dispute with respect to the interpretation or application of any of the terms of said contract.

6. The order of the Board is too broad. The sole issue was the propriety of the particular notice given by the employer with respect to individual grievance presentation. There is no issue and no proof of any refusal to bargain collectively.

Dated: Los Angeles, California, December 1, 1942.

GIBSON, DUNN & CRUTCHER
By J. STUART NEARY
Attorneys for North American Aviation, Inc.
IRA C. POWERS
Of Counsel.

Copy mailed to Attorney for Petitioner Dec. 11, 1942.

[Endorsed]: Filed Dec. 12, 1942.